

# Death Benefits for a Concubine Under Louisiana's Workmen's Compensation Law

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## NOTES

### DEATH BENEFITS FOR A CONCUBINE UNDER LOUISIANA'S WORKMEN'S COMPENSATION LAW

Plaintiff, the concubine of the deceased, sued to recover death benefits<sup>1</sup> under Louisiana's Workmen's Compensation Law.<sup>2</sup> At the time of death, plaintiff, though unmarried, had lived with the deceased as his wife for eleven years in a stable home relationship. None of the usual class of claimants were involved, the decedent having no legal spouse, no children, and no surviving dependent parent or sibling. The Louisiana Supreme Court reversed the lower court's dismissal<sup>3</sup> of the plaintiff's claim and *held* that under these circumstances the dependent concubine of a workman could recover death benefits for

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1. LA. R.S. 23:1231-36 (Supp. 1975) comprise the death benefits provisions of Louisiana's Workmen's Compensation Law. Plaintiff initially sought recovery under LA. R.S. 23:1232 (1950) as the "widow" of the deceased and, alternatively, as an "other dependent." Recovery as a "widow," which is a preferred classification, was rejected by the lower court and not considered by the Louisiana Supreme Court. LA. R.S. 23:1232 (1950) provides in part:

Payment to dependents shall be computed and divided among them on the following basis: (1) If the widow or widower alone, thirty-two and one-half per centum of wages . . . . (8) If there are neither widow, widower, nor child, nor dependent parent entitled to compensation, then to one brother or sister, thirty-two and one-half per centum of wages with eleven per centum additional for each brother or sister in excess of one. If other dependents than those enumerated, thirty-two and one-half per centum of wages for one, and eleven per centum additional for each such dependent in excess of one, subject to a maximum of sixty-five per centum of wages for all, regardless of the number of dependents.

Members of a preferred class must receive their statutory share before deferred claimants can recover. Should the preferred classes exhaust the maximum amount payable under the statute, then the deferred claimants receive nothing. *Caddo Contracting Co. v. Johnson*, 222 La. 796, 64 So. 2d 177 (1953). See *Ruffin v. Travelers Ins. Co.*, 312 So. 2d 878 (La. App. 1st Cir. 1975). See also *Brown v. Kaiser Aluminum & Chem. Corp.*, 250 So. 2d 99 (La. App. 4th Cir. 1971). The maximum amount payable is a flat rate as set by LA. R.S. 23:1202 (Supp. 1975).

2. Louisiana's workmen's compensation law is variously denominated as the Employers' Liability Act, the Burke-Roberts Employers' Liability Act, or Louisiana's Workmen's Compensation Law. 1914 La. Acts, No. 20; LA. R.S. 23:1021 (Supp. 1975).

3. *Henderson v. Travelers Ins. Co.*, 346 So. 2d 816 (La. App. 1st Cir. 1977), rev'd, 354 So. 2d 1031 (La. 1978).

his work-related death as a dependent member of his family.<sup>4</sup> *Henderson v. Travelers Insurance Co.*, 354 So. 2d 1031 (La. 1978).

Louisiana's Workmen's Compensation Law was enacted in 1914<sup>5</sup> to replace the existing, inadequate scheme of tort liability<sup>6</sup> and to shift the economic burden of industrial hazards to industry as a cost of production.<sup>7</sup> The purpose of the death benefits provisions, in particular, has been to compensate those dependent claimants who are deprived of their means of financial support.<sup>8</sup> The provisions have remained substantially unaltered up to the present time.<sup>9</sup>

The courts, in applying the death benefits provisions, have not always been mindful of their purpose. The earliest cases arising under these provisions involved claimants who were blood relatives of a deceased workman. In *Haag v. E. Z. Can Opener Bag Co.*,<sup>10</sup> the Orleans Court of Appeal dealt for the first time with the availability of death benefits to an "other dependent."<sup>11</sup> Looking to the statute's use of "family"<sup>12</sup> and to

4. See LA. R.S. 23:1232(8) (1950), *supra* note 1. See also note 11, *infra*.

5. 1914 La. Acts, No. 20. For an authoritative discussion of Louisiana's workmen's compensation law, past, present, and future, see W. MALONE, LOUISIANA WORKMEN'S COMPENSATION LAW (1951).

6. The courts had developed the employers' defenses such as contributory negligence, the fellow-servant rule, and assumption of risk; and these defenses, along with the inherent increasing hazards in developing industry, often worked harshly against the employee and his tort action. OFFICIAL JOURNAL OF THE PROCEEDINGS OF THE STATE OF LOUISIANA, 2d Reg. Sess. at 34-35 (1914).

7. *Id.*

8. See, e.g., *McDermott v. Funel*, 258 La. 657, 247 So. 2d 567 (1971); *Flanagan v. A L & W Moore Trucking Contractors*, 100 So. 2d 289 (La. App. 2d Cir. 1958).

9. Though the provisions have been frequently amended, the changes have centered primarily on the listed disabilities and the allowable compensation. See 1916 La. Acts, No. 243; 1918 La. Acts, Nos. 38, 39; 1920 La. Acts, Nos. 234, 244, 247; 1922 La. Acts, No. 43; 1924 La. Acts, Nos. 21, 216; 1926 La. Acts, No. 85; 1928 La. Acts, No. 242; 1930 La. Acts, No. 81; 1934 La. Acts, No. 29; 1938 La. Acts, No. 232; 1942 La. Acts, No. 96; 1944 La. Acts, Nos. 120, 143; 1946 La. Acts, No. 371; 1948 La. Acts, Nos. 175, 179; 1950 La. Acts, No. 539; 1968 Ex. Sess. La. Acts, No. 25; 1970 La. Acts, No. 412; 1975 La. Acts, No. 583. The greatest changes in the death benefits provisions occurred between 1916 and 1926.

10. 2 Pelt. 598 (La. App. Orl. Cir. 1919).

11. To recover as an "other dependent" under LA. R.S. 23:1232(8) (1950), a claimant must fit within the definition of "dependent" in LA. R.S. 23:1253 (1950). The latter provision provides in part: "No person shall be considered a dependent, unless he is a member of the family of the deceased employee, or bearing to him the relation of husband or widow, or lineal descendant or ascendant, or brother, or sister, or child."

Massachusetts cases<sup>13</sup> interpreting similar provisions, the court denied recovery to the niece and nephew of the deceased. Although the claimants were dependent on the deceased, the court found that they did not reside with him and were not subject to his authority. In a later case,<sup>14</sup> the sister, niece, and grandnephew were allowed compensation based on a finding that they were dependent on the deceased and had lived in the same household with him. These two factors—dependency and residency—have since become determinative in deciding whether a person may recover as an “other dependent.”<sup>15</sup>

In *Archibald v. Employers' Liability Assurance Corp.*<sup>16</sup> the Louisiana Supreme Court faced the new question of whether claimants unrelated by blood to a deceased workman could recover death benefits. A dependent father-in-law, mother-in-law, and two sisters-in-law resided with the deceased, thereby meeting the second criterion which, in the past, had entitled dependent blood relatives to recover. The court, reasoning that the Act should be liberally construed with a view towards carrying out its purpose,<sup>17</sup> held that all claimants were entitled to compensation. The court has used the same reasoning in awarding benefits to the unacknowledged illegitimate child of

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This provision has remained substantially unaltered since the original Act 20 of 1914. See the acts cited at note 9, *supra*. The courts have interpreted the word “or” in this provision to be disjunctive and hence the word “family” to include persons other than those relations specifically listed in the provision. *Accord*, *Caddo Contracting Co. v. Johnson*, 222 La. 796, 64 So. 2d 177 (1953). See *Thompson v. Vestal Lumber & Mfg. Co.*, 208 La. 83, 22 So. 2d 842 (1945), discussed in text at notes 16 and 18, *infra*, respectively; *Archibald v. Employers' Liab. Assurance Corp.*, 202 La. 89, 11 So. 2d 492 (1942). See also *Turner v. Consolidated Underwriters*, 170 So. 2d 199 (La. App. 2d Cir. 1964), which gives a different twist to the meaning of “family.”

12. La. R.S. 23:1232(8), 23:1253 (1950). See note 11, *supra*.

13. The court looked to the similar provisions of Massachusetts' Employers' Liability Act and the following cases interpreting them: *In re Murphy*, 228 Mass. 555, 117 N.E. 794 (1917); *In re Cowden*, 225 Mass. 66, 113 N.E. 1036 (1916); *In re Murphy*, 224 Mass. 592, 113 N.E. 283 (1916); *In re Kelly*, 222 Mass. 538, 111 N.E. 395 (1916).

14. *Joseph v. Board of Comm'rs*, 5 La. App. 678 (Orl. 1927). *But see Grant v. Louisiana Sawmill Co., Inc.*, 6 La. App. 673 (2d Cir. 1927), where the dependent grandmother of the deceased was held entitled to benefits even though she didn't reside with him. The court construed “family” as encompassing a dependent blood relative not residing with the deceased employee.

15. *Patin v. T. L. James & Co.*, 218 La. 949, 51 So. 2d 586 (1951); *Turner v. Consolidated Underwriters*, 170 So. 2d 199 (La. App. 2d Cir. 1964).

16. 202 La. 89, 11 So. 2d 492 (1942).

17. *Id.* at 94, 11 So. 2d at 493. See text at notes 7-8, *supra*.

a deceased<sup>18</sup> and to the nephew of a deceased's concubine<sup>19</sup> when the dependency and residency criteria were met.

The concubine, as a claimant, has fared less well under the jurisprudence. In the leading case of *Moore v. Capitol Glass Co.*,<sup>20</sup> the First Circuit Court of Appeal was confronted with a claimant who had lived with a workman for six years prior to his death and who was dependent upon him for support. Although they had not been married, the two had lived together as husband and wife and were so regarded by neighbors and friends. However, in spite of this compliance with the dependency and residency requirements, the court denied compensation. The cases granting recovery to illegitimate children were distinguished on the grounds that the illegitimate children were not responsible for their status and that their parents had an obligation to support them under the Louisiana Civil Code.<sup>21</sup> Under similar circumstances, the Louisiana Supreme Court in *Humphreys v. Marquette Casualty Co.*<sup>22</sup> relied heavily on *Moore* and denied recovery to a concubine, stating that it was not within the "contemplation of the legislature" to allow her death benefits.<sup>23</sup>

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18. *Thompson v. Vestal Lumber & Mfg. Co.*, 208 La. 83, 22 So. 2d 842 (1945). This decision cast doubt on a small line of cases which had denied benefits to unacknowledged illegitimate children of deceased employees. See *Beard v. Rickert Rice Mills, Inc.*, 185 La. 55, 168 So. 492 (1936); *Gullung v. Dalgarn Const. Co.*, 1 La. App. 147 (Orl. Cir. 1924). See also *Gros v. Millers' Indem. Underwriters*, 153 La. 257, 95 So. 709 (1923), where the same issue was presented but not ruled upon. Illegitimate children acknowledged under the provisions of LA. CIV. CODE arts. 203, 204, and 205 are each entitled to recover as a "child" by the express terms of the Act. LA. R.S. 23:1021(3), 23:1232 (1950).

19. *Patin v. T. L. James & Co.*, 218 La. 949, 51 So. 2d 586 (1951).

20. 25 So. 2d 248 (La. App. 1st Cir. 1946).

21. *Id.* at 250. The court in *Moore* relied, in part, upon *Schurler v. Industrial Comm'n*, 86 Utah 284, 43 P.2d 696 (1935). It is interesting to note that the court in *Schurler* based denial on grounds unrelated to these distinctions, being more concerned with the possibility of persons "building up" recovery situations out of an illicit relationship. Consequently, Louisiana's jurisprudence, following *Moore's* path, has focused on these distinctions which were relatively unimportant in *Schurler*. These distinctions seem to have provided fertile soil for the growth of the concept of "moral unworthiness"—a stigma attached to concubines to preclude their recovery under the Act.

22. 235 La. 355, 103 So. 2d 895 (1958).

23. Also cited in *Humphreys* were *Simpson v. Norman*, 51 La. Ann. 1355, 26 So. 266 (1899), and *Sparrow v. Sparrow*, 231 La. 966, 93 So. 2d 232 (1957). These cases denied rights to a concubine in contractual and partnership settings, respectively, and were cited in *Humphreys* for the general proposition that the law will not

In the instant case the appellate court believed that the concubine was entitled to death benefits based on its "best interpretation" of Revised Statutes 23:1232(8) and on the reasoning supporting *Archibald* and *Thompson v. Vestal Lumber & Mfg. Co.*,<sup>24</sup> but felt constrained to dismiss her claim because of the supreme court's decision in *Humphreys*.<sup>25</sup> However, the Louisiana Supreme Court reversed the dismissal, overruled *Humphreys*, and granted recovery to the concubine. In reaching this decision, the court relied on the jurisprudence which had allowed compensation to "dependent members of the family" in the absence of blood ties<sup>26</sup> and the fact that "the workmen's compensation act was designed to protect all dependent members of the family household from the loss of support caused by a wage-earner's death through work-accident."<sup>27</sup> Emphasizing these two factors, the court reasoned that the use of "moral unworthiness" to distinguish concubines from other unrelated dependents was unsound. The court could find no legislative intent in the terms of the act itself to exclude a claimant for moral unworthiness; nor could it discern any general legislative policy indicating a desire to punish concubines through a general deprivation of rights and benefits. Therefore, the court felt that it had "erred in *Humphreys* in importing moral unworthiness as a criterion for eligibility for compensation benefits . . . ."<sup>28</sup>

Underlying this decision is an express repudiation of moral unworthiness as a factor to be used in determining recovery under the act and a reaffirmation that dependency on a workman and residency in his family household are the only relevant criteria for recovery. However, it is important to note the court's emphasis on the definition of a "concubine." To be a "concubine," a woman must have lived with a man in an arrangement resembling that of husband and wife.<sup>29</sup> Conse-

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"countenance" illicit relationships. See also *Liberty Mut. Ins. Co. v. Caesar*, 345 So. 2d 64 (La. App. 3d Cir. 1977), for a more recent case where death benefits were denied to the concubine.

24. 208 La. 83, 22 So. 2d 842 (1945).

25. *Henderson v. Travelers Ins. Co.*, 346 So. 2d 816, 818-19 (La. App. 1st Cir. 1977), rev'd, 354 So. 2d 1031 (La. 1978).

26. 354 So. 2d at 1032, 1033.

27. *Id.* at 1034.

28. *Id.*

29. *Id.* at 1033. The court continued, "As we stated in *Gauff v. Johnson*, 161 La.

quently, the court placed much emphasis on the duration and stability of the plaintiff's and decedent's living arrangement. Also stressed were the facts that no other claimants were involved and that any such claimants, if present, would have recovered in a preferred category.<sup>30</sup> The implications of this decision may be limited by this restrictive definition of a concubine.

Justice Summers, in his dissent, noted that allowing recovery to the concubine was contrary to the general rule existing throughout the United States.<sup>31</sup> Although this statement is true, it is misleading. The court was construing the Louisiana Workmen's Compensation Law, and the variations in the compensation schemes of the other states minimize the relevance of any general rule. Additionally, the existence of numerous exceptions to such a rule further minimize its importance.<sup>32</sup>

The decision in *Henderson* was not completely unexpected; recent cases having forecasted such a result. In *Dickerson v. Employers Mutual Liability Insurance Co.*,<sup>33</sup> the Second Circuit Court of Appeal indicated that it felt "constrained to follow" *Humphreys* because it had been decided by the supreme court.<sup>34</sup> Certiorari was later denied, but only over the dissent of three justices who felt that *Humphreys* should be overruled.<sup>35</sup> Indeed, most of the cases in this area have illustrated a gradual broadening of recovery under the act.<sup>36</sup>

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975, 977, 109 So. 782, 783 (1926): ". . . the concubine must not be confounded with the courtesan, or even what is ordinarily called a mistress. She is a wife without title." *Id.* See Succession of Franz, 232 La. 310, 94 So. 2d 270 (1957) ("concubinage" describes a status and not simply acts of fornication or adultery, even if frequent, and implies maintaining a status which resembles marriage); Succession of Jahraus, 114 La. 456, 38 So. 417 (1905) (concubinage continues today to describe a status resembling legal marriage); Note, 32 TUL. L. REV. 127 (1957) (a concubine is not a "mistress" or "courtesan" because she assumes the duties, responsibilities, and position of a legal wife).

30. 354 So. 2d at 1032.

31. *Id.* at 1035 (Summers, J., dissenting).

32. For instance, where common law marriages are accepted, the common law wife can recover. Furthermore, in so far as common law wives resemble concubines, the general rule and its exceptions actually support the present decision. For discussion of other exceptions, see generally 81 AM. JUR. 2d Workmen's Compensation §§ 198-200.

33. 248 So. 2d 852 (La. App. 2d Cir. 1971).

34. *Id.* at 854.

35. 252 So. 2d 457 (La. 1971).

36. See text at notes 10 through 19, *supra*.

Despite the trend of increased recovery under the act, future application of this decision may be restricted. Although the court granted recovery to a concubine, it did so in a narrow holding. The holding was limited by the emphasis on the particular facts<sup>37</sup> and by the definition of a "concubine."<sup>38</sup> Lower courts may find little guidance in the instant decision in a factual setting where both the surviving spouse of the deceased and his concubine claim workmen's compensation benefits.<sup>39</sup> Indeed the Louisiana Supreme Court may find that this decision has created some practical problems, because if a concubine is allowed to recover in such a situation, the court will have to make an unfortunate choice. One choice would be to allow equal recovery to the widow and the concubine, but this would distort section 1232 in its present form.<sup>40</sup> A second choice would be to follow the instant case and allow the concubine to recover as a member of the deferred class of "other dependents." Such a decision would be analogous to that in *Stokes v. Aetna Casualty & Surety Co.*,<sup>41</sup> in which an unacknowledged illegitimate child was precluded from recovering benefits because the other legitimate children, who were in a preferred class, had absorbed the maximum amount payable under the act. However, the United States Supreme Court reversed

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37. The court placed great emphasis on the following facts: (1) the deceased and his concubine had lived together for eleven years; (2) they had lived in a stable and loving relationship; (3) the deceased was not married, had no children, and was survived by no dependent parents or siblings, so his concubine was the only person asserting any right to death benefits. 354 So. 2d at 1032.

38. See note 29, *supra*, and accompanying text.

39. The situation where an employee would be survived by his legal spouse as well as his concubine is not unheard of. See *Caddo Contracting Co. v. Johnson*, 222 La. 796, 64 So. 2d 177 (1953) (where the deceased had maintained two households—one consisting of his legal wife and the other of his concubine and illegitimate children).

40. LA. R.S. 23:1232 (1950) does not contemplate such an award of benefits. It provides that "payment to dependents shall be computed and divided among them on the following basis: (1) If the widow or widower alone . . . (2) If the widow or widower . . . (3) If the widow or widower . . ." "Widow" and "widower," as used in this provision, refer to only one person.

A similar problem could arise with LA. R.S. 23:1233 (Supp. 1975), which provides that "in the case of remarriage of a surviving spouse, two years compensation payments shall be payable in one lump sum." As things stand now, it would seem that the reference to a "surviving spouse" and "remarriage" precludes payment to a concubine. However, should concubines be held to recover equally with surviving spouses, a situation will arise with which this provision was not designed to cope.

41. 257 La. 424, 242 So. 2d 567 (1970).

*Stokes* and held that this distinction between legitimate and unacknowledged illegitimate children violated the equal protection clause of the United States Constitution.<sup>42</sup> To allow compensation to a legal spouse in preference to a concubine could possibly invite a similar constitutional attack.<sup>43</sup>

A situation more likely to arise would be the claim of a concubine coupled with the claims of one or more preferred claimants other than a surviving wife.<sup>44</sup> To award recovery to a concubine as a deferred claimant in this situation would likewise be differential treatment based on marital status. Further, this situation may be more fragile constitutionally because the threat to the state's interest in promoting the legitimate family unit seems to be less weighty. The wife has traditionally been viewed as central to the legitimate family unit, and the concu-

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42. *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164 (1972).

43. The outcome would depend largely on whether the level of scrutiny to be used in examining marital status classifications would be similar to that used in examining illegitimate-legitimate children classifications. In dealing with the latter, the United States Supreme Court has stopped short of a strict scrutiny analysis. However, it has not applied minimal scrutiny, preferring a middle ground. See Note, 38 LA. L. REV. 189 (1977), and Note, 32 ARK. L. REV. 120 (1978), both discussing *Trimble v. Gordon*, 430 U.S. 762 (1977). As to statutory classifications based on marital status, the Court in *Eisenstadt v. Baird*, 405 U.S. 438 (1972), likewise applied a level of scrutiny less than strict yet more than minimal. See Glucksman and Mitchelson, *Equal Protection for Unmarried Cohabiters: An Insider's Look at Marvin v. Marvin*, 5 PEPPERDINE L. REV. 283 (1978).

It can be said that the Court might more closely examine statutory classifications based on the legitimacy of children. Illegitimate children are not responsible for their status, and therefore such a classification would not reasonably further Louisiana's rational interest in promoting the legitimate family. The concubine, on the other hand, is responsible for her status.

However, it is to be noted that deferred recovery does not seem to reasonably further Louisiana's interest as to the concubine. Although the concubine is somewhat "responsible" for her status, allowing her to recover only as a deferred claimant is not a reasonable way to deter her from such cohabitation. This reasoning was precisely that which prompted the Court in *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972), to hold unconstitutional the distinction between legitimate and unacknowledged illegitimate children. On the other hand, allowing a concubine to recover equally with the lawful wife, as an expression of legislative policy, might have the opposite effect of encouraging cohabitation. These considerations may have been what prompted the court in *Henderson* to say: "The legislative policy . . . of disfavoring concubines in favor of the legitimate family . . . is adequately served by the concubine's less favored position with regard to the preferred compensation claimants . . . ." *Henderson v. Travelers Ins. Co.*, 354 So. 2d 1031, 1034 n.6 (La. 1978).

44. *E.g.*, dependent parents, brothers, sisters, or children of the deceased workman.

bine is definitely an intruder when she competes with the wife. However, when the concubine is competing with a child for compensation she presents less of a threat to the state interest in promoting the legitimate family. Concubinage inherently threatens a marriage; but when there is no legal wife, a concubine and a child have the potential to function as a family unit. When the concubine competes with a parent or sibling of the deceased workman the state has even less reason to discriminate against her because the latter claimants are not considered members of the workman's family unit.

A final question to be considered is whether this decision portends a similar result in the area of wrongful death actions.<sup>45</sup> The first class of beneficiaries in a wrongful death action includes "the surviving spouse" and any children. Cases dealing with this class, and the statute in general, have indicated that the basis of the remedy is the blood or marriage tie.<sup>46</sup> The difference between this basis and that of workmen's compensation—which is the economic dependency of the claimant<sup>47</sup>—would seem to minimize the relevance of the instant decision to a wrongful death action by a concubine.<sup>48</sup> However, in *Weber v. Aetna Casualty & Surety Co.*<sup>49</sup> the Court noted the

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45. Article 2315 of the Louisiana Civil Code provides in pertinent part that [t]he right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased in favor of: (1) the surviving spouse and child or children of the deceased, or either such spouse or child or such children; (2) the surviving father and mother of the deceased, or either of them, if he left no spouse or child surviving; and (3) the surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving. The survivors in whose favor this right of action survives may also recover the damages which they sustained through the wrongful death of the deceased.

46. See, e.g., *Harris v. Lumbermen's Mut. Cas. Co.*, 48 So. 2d 728 (La. App. 1st Cir. 1950) (the spouse, though judicially separated from the victim, was entitled to bring the wrongful death action); *Brock v. Friend*, 4 La. App. 723 (1st Cir. 1925) (widow, though remarried at the time, was allowed to maintain her action). For a thorough discussion of LA. CIV. CODE art. 2315, see Johnson, *Death on the Callais Coach: The Mystery of Louisiana Wrongful Death and Survival Actions*, 37 LA. L. REV. 1 (1976).

47. See text at note 8, *supra*. See also *Flanagan v. A L & W Moore Trucking Contractors*, 100 So. 2d 289 (La. App. 2d Cir. 1958), which is also in clear contrast to the cases cited in note 46, *supra*.

48. See generally *Board of Comm'rs v. Public Belt R. Comm'n*, 58 So. 2d 306 (La. App. Or. Cir. 1952), where the court discussed the "antagonistic philosophies" behind these two areas of the law.

49. 406 U.S. 164 (1972).

similarities between article 2315 and Louisiana's Workmen's Compensation Act<sup>50</sup> and felt that *Levy v. Louisiana*,<sup>51</sup> a wrongful death case, was binding.<sup>52</sup> Should there arise a United States Supreme Court decision mandating equal treatment of a surviving spouse and a concubine under the workmen's compensation law, such a decision might be binding in a subsequent constitutional attack on the wrongful death provisions.

The decision in *Henderson* is palatable, particularly as a recognition of the impropriety of using "moral unworthiness" as a factor in awarding workmen's compensation benefits. By removing the moral judgment, this decision realizes the true purpose of a compensation scheme in an industrial society—compensation for dependents. However, as discussed earlier,<sup>53</sup> several problems lie ahead. It is submitted that the problems of a constitutional dimension could be eliminated by amending the death benefits provisions. By substituting one term such as "consort" for "spouse," "widow," and "widower," and by ascribing to "consort" a definition requiring living together in a permanent relationship, the courts could address each situation with needed flexibility and an awareness of the purpose behind the act, while adhering to the spirit of the present case.<sup>54</sup>

*William Mark Claudel*

#### A CAUTIOUS STEP FORWARD

In a juvenile delinquency proceeding alleging commission of first degree murder by a juvenile, the juvenile court denied pretrial motions requesting a public trial, a trial by jury, and

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50. The Court noted that both the wrongful death provisions and the workmen's compensation law were "state-created compensation schemes" benefiting close relatives and dependents of the deceased and that both were "outgrowths and modifications of our basic tort law, designed to soften the often harsh common-law rules." 406 U.S. at 171-72.

51. 391 U.S. 68 (1968).

52. 406 U.S. at 168-72.

53. See text at notes 36-52, *supra*.

54. Although such an amendment could possibly have the effect of sanctioning concubinage, the simplicity and ease of administration which would result strongly militate in favor of it.