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goal of punishment and deterrence be effectuated. This policy would be thwarted if the tortfeasor is able to skirt the award by passing the liability on to a surety. It cannot be said that the legislature intended to provide a means whereby a tortfeasor could avoid the penalty of paying punitive damages by allowing satisfaction to be sought from a surety. The purpose of NRS 645B.030 is to protect the public and not to protect the mortgage company.

Since the plaintiff does not "suffer" punitive damages within the meaning of NRS 645B.030(2), the order requiring New Hampshire Insurance Company to pay the \$5,000 punitive sum to the Gruhns is reversed and vacated.

STATE INDUSTRIAL INSURANCE SYSTEM, AN AGENCY  
OF THE STATE OF NEVADA, APPELLANT, v. DONALD  
E. KELLY, RESPONDENT.

No. 14367

November 3, 1983

671 P.2d 29

Appeal from district court order reversing administrative determination. Eighth Judicial District Court, Clark County; James A. Brennan, Judge.

The district court reversed administrative determination of ineligibility for state industrial insurance benefits, and State Industrial Insurance System appealed. The Supreme Court held that: (1) claimant met burden of showing that claimed disability or condition was in fact caused or triggered or contributed to by industrial injury and not merely result of natural progression of preexisting disease or condition, and (2) mere fact that claimant had preexisting congenital defect did not preclude his coverage.

**Affirmed.**

*Dean A. Hardy*, Las Vegas, for Appellant.

*J. Michael Nave*, Las Vegas, for Respondent.

1. WORKERS' COMPENSATION.

In case of industrial aggravation of congenital defect which rendered asymptomatic condition symptomatic, claimant has burden of showing that claimed disability or condition was in fact caused or triggered or contributed to by industrial injury and not merely result of natural progression of preexisting disease or condition.

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ASSEMBLY COMMERCE & LABOR

DATE: 5/12/03 ROOM: 4100 EXHIBIT G

SUBMITTED BY: Ray Badger

## 2. WORKERS' COMPENSATION.

Workers' compensation claimant who claimed that as result of industrial injury, his previously asymptomatic umbilical hernia was rendered symptomatic and required compensable surgery, met his burden of showing that claimed disability or condition was in fact caused or triggered or contributed to by industrial injury and not merely result of natural progression of preexisting disease or condition, notwithstanding fact that industrial aggravation may have been but one of several causes producing symptomatic condition.

## 3. WORKERS' COMPENSATION.

Mere fact that workers' compensation claimant had preexisting congenital defect did not preclude industrial insurance benefits coverage for industrial injury which rendered his previously asymptomatic condition symptomatic.

## OPINION

*Per Curiam:*

This is an appeal from a district court order reversing an administrative determination of ineligibility for state industrial insurance benefits. Appellant State Industrial Insurance System (SIIS) contends that the evidence was insufficient to support respondent Kelly's claim that, as the result of an industrial injury, he suffers a symptomatic condition requiring surgery which is compensable by SIIS. We disagree.

Since birth, Kelly has had an umbilical hernia or "hole" in his abdominal wall. Until his industrial accident, however, Kelly's hernia had been asymptomatic or non-protrusive. While lifting a heavy sliding glass door at work, Kelly felt a sharp pain in his abdomen; and a bulge protruded from his belly, rendering his previously asymptomatic condition symptomatic. Although emergency room treatment (paid for by SIIS) reduced the bulge momentarily, the hernia reappeared soon thereafter and still protrudes at present. We therefore find SIIS's contention that compensated treatment returned Kelly to his pre-injury condition to be meritless.

[Headnote 1]

Whether industrial aggravation of a congenital defect which rendered an asymptomatic condition symptomatic is compensable is a question of first impression in Nevada. We have, however, recognized the principle that "preexisting illness normally will not bar a claim if the employment aggravates, accelerates or combines with the disease process to trigger disability or death." *Spencer v. Harrah's, Inc.*, 98 Nev. 99, 101, 641 P.2d 481, 482 (1982). We consequently adopt the rule of law enunciated by our sister state Arizona regarding this issue. The claimant has the burden of showing that the claimed disability

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or condition was in fact caused or triggered or contributed to by the industrial injury and not merely the result of the natural progression of the preexisting disease or condition. *Arellano v. Industrial Commission*, 545 P.2d 446, 452 (Ariz. 1976). *See also*, *Geentry v. Hyster, Inc.*, 541 P.2d 486 (Ore. 1975); *Hawkins v. Green Associated*, 559 P.2d 118 (Alaska 1977).

[Headnotes 2, 3]

We have determined that Kelly has met that burden in the instant case. The fact that industrial aggravation may have been but one of several causes producing the symptomatic condition is of no moment. "An industrially related accident does not have to be the cause of the injury or death, *but merely a cause*. If the job is said to precipitate or accelerate the condition, a causal connection with the work can be found." *Harbor Insurance Company v. Industrial Commission*, 545 P.2d 458, 461 (Ariz. 1976). The mere fact that Kelly had a preexisting congenital defect, moreover, does not preclude his coverage. "[I]n the field of Workmen's Compensation, the employer takes his employee as he is. In legal contemplation, if an injury, operating on an existing bodily condition or predisposition, produces a further injurious result, that result is caused by the injury." *Murray v. Industrial Commission*, 349 P.2d 627, 633 (Ariz. 1960). SIIS, as a consequence, must compensate Kelly for the surgical repair of his protruding hernia, even though the operation necessarily requires repair of a congenital defect. The district court order was correct.

Affirmed.

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IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF HORSE SPRINGS, W. DALTON LA RUE, SR. AND JUANITA S. LA RUE, DBA WINNEMUCCA RANCH, APPELLANTS, v. STATE ENGINEER, STATE OF NEVADA, ROBERT W. MARSHALL AND NANETTE MARSHALL, ROBERT DICKENSON AND DOROTHY DICKENSON, DBA INTERMOUNTAIN LAND CO., RESPONDENTS.

No. 14112

November 10, 1983

671 P.2d 1131

Appeal from a judgment upholding an administrative agency determination. Second Judicial District Court, Washoe County; Grant L. Bowen, Judge.

Ranch owners appealed from a decision of the district court

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