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VERTEFEUILLE, J., with whom ZARELLA, J., joins, dissenting. I respectfully disagree with the majority's conclusion that human immunodeficiency virus (HIV) constitutes an occupational disease, as defined by General Statutes § 31-275 (15), for correction officers, such as the plaintiff's decedent, employed by the defendant, the department of correction (department), as members of the department's emergency response unit. After a careful review of our prior decisions, I conclude that the majority, by focusing on causation to the exclusion of an increased risk of contraction, interprets the statutory definition too narrowly. Because the undisputed evidence before the workers' compensation commissioner for the fourth district (commissioner) was that only one department employee in Connecticut has contracted HIV through workplace exposure, and that exposure was the result of a needle stick, I must conclude that correction officers who are members of the emergency response unit are not at an increased risk of contracting HIV. Accordingly, I further conclude that HIV is not an occupational disease for these correction officers. I therefore dissent.

Section 31-275 (15) provides that an " '[o]ccupational disease' includes any disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such . . . ." Unlike the majority, I construe § 31-275 (15), as interpreted by our prior decisions, to require consideration of two factors. Not only must there be, as the majority acknowledges, a direct causal connection between the employment and the disease contracted, but there must also be an increased risk of incurring the disease from that employment. See *Glodenis* v. *American Brass Co.*, 118 Conn. 29, 40–41, 170 A. 146 (1934); *Madeo* v. *I. Dibner & Bro., Inc.*, 121 664, 667, 186 A. 616 (1936); *LeLenko* v. *Wilson H. Lee Co.*, 128 Conn. 499, 505, 24 A.2d 253 (1942). In other words, the occupation must be such that an individual in that position is more likely to contract the disease than he or she would be in another occupation.

Prior to this court's decision in *Hansen* v. *Gordon*, 221 Conn. 29, 602 A.2d 560 (1992), on which the majority relies, this court has had numerous opportunities to consider the statutory language at issue in this appeal. This court first analyzed the definition of an occupational disease[1] in *Glodenis* v. *American Brass Co.*, supra, 118 Conn. 31–32, in which the plaintiff, a factory worker, claimed that the trial court improperly excluded evidence that could have established that lead poisoning constituted an occupational disease. This court stated that, "[t]o come within the [statutory] definition an occupational disease must be a disease which

is a *natural incident* of a particular occupation, and must *attach to that occupation a hazard* which distinguishes it from the usual run of occupations and is in excess of that attending employment in general.'' (Emphasis added.) Id., 40–41.

Two years later, then Chief Justice Maltbie, the author of the *Glodenis* majority opinion, again addressed the issue in *Madeo* v. *I. Dibner & Bro., Inc.*, supra, 121 Conn. 664. In that case, the plaintiff, a dressmaker, unsuccessfully sought to characterize tuberculosis as an occupational disease. Referencing the *Glodenis* court's definition, this court stated that, ''[t]his definition requires that, to constitute an occupational disease, the disease must be a natural incident of a particular kind of employment, one which is *likely to result from that employment because of its inherent nature.* It does not include a disease which results from the peculiar conditions surrounding the employment of the claimant in a kind of work which would not from its nature be more likely to cause it than would other kinds of employment carried on under the same conditions.'' (Emphasis added.) Id., 667.

This court further explained its interpretation of the definition of an occupational disease in *LeLenko* v. *Wilson H. Lee Co.*, supra, 128 Conn. 499–500, in which a linotype operator claimed that dermatitis constituted an occupational disease. In affirming the trial court's conclusion that, as it pertained to linotype operators, dermatitis constituted an occupational disease, this court stated that, ''[w]hen we referred in [*Glodenis* and *Madeo*] to disease as being a 'natural' incident of the employment, we used that word in the sense that we have used it in defining proximate causation . . . .'' (Citation omitted.) Id., 505.

In *Hansen* v. *Gordon*, supra, 221 Conn. 38, this court concluded that hepatitis type B virus (hepatitis B) constituted an occupational disease as to dental hygienists. Again citing *Glodenis*, the court stated that ''the requirement that the disease be 'peculiar to the occupation' and 'in excess of the ordinary hazards of employment,' refers to those diseases in which there is a causal connection between the duties of the employment and the disease contracted by the employee.'' Id., 35.

Most recently, in *Biasetti* v. *Stamford*, 250 Conn. 65, 73, 735 A.2d 321 (1999), we concluded that ''[a] gun battle . . . is not a common occurrence in most of the working world.'' (Internal quotation marks omitted.) Thus, ''it can be said that the plaintiff's [post-traumatic stress disorder/combat fatigue syndrome] was an occupational disease because his job and experiences as a police officer were *more likely* to cause this stress disorder than would other kinds of employment carried on under the same conditions.'' (Emphasis added; internal quotation marks omitted.) Id.

This brief survey of our case law reveals that since 1936, we have consistently stated that an occupational disease must be a " 'natural' incident of the employment"; *LeLenko* v. *Wilson H. Lee Co.*, supra, 128 Conn. 505; and must create "a hazard which distinguishes it from the usual run of occupations and is in excess of that attending employment in general." (Emphasis added.) *Glodenis* v. *American Brass Co.*, supra, 118 Conn. 40–41. I construe this language as contemplating consideration of both causation *and* increased risk.[2] As we stated in *LeLenko*, the phrase " 'natural' incident" refers to causation. *LeLenko* v. *Wilson H. Lee Co.*, supra, 505. Likewise, I interpret the phrase "a hazard which distinguishes it from the usual run of occupations and is in excess of that attending employment in general"; *Glodenis* v. *American Brass Co.*, supra, 40–41; to refer specifically to an increased risk of contraction. I reach this conclusion based upon this court's previous consideration of whether contracting a specific disease is more likely to occur as a result of the relevant occupation. See *Madeo* v. *I. Dibner & Bro., Inc.*, supra, 121 Conn. 667 ("disease must be . . . likely to result from that employment"); *Biasetti* v. *Stamford*, supra, 250 Conn. 73 ("experiences as a police officer were more likely to cause [post-traumatic stress disorder/combat fatigue syndrome] than would other kinds of employment carried on under the same conditions" [internal quotation marks omitted]).

The majority, by relying on *Hansen* and its progeny, concludes that HIV is " 'peculiar to' " and " 'so distinctly associated with the [correction officers'] occupation that there is a direct causal connection between the duties of the employment and the disease contracted.' " I believe that by focusing on our case law emphasizing causation, the majority collapses what has been a two part analysis into a single inquiry into causation and fails to explore adequately whether correction officers who are members of the emergency response unit are at an increased risk of contracting HIV.

The present case is factually distinguishable from *Hansen*, because, in *Hansen*, "*all* the expert testimony revealed that dental professionals are at *an increased risk of contracting [hepatitis B]* because of their exposure to bodily secretions on a daily basis, as well as their use of sharp instruments that can puncture their skin, thereby allowing [hepatitis B] entry into their bodies." (Emphasis added.) *Hansen* v. *Gordon*, supra, 221 Conn. 38. Given this undisputed expert testimony, the *Hansen* court did not *need* to address whether dental hygienists were more likely to contract hepatitis B due to their employment. Such is not the case here. The record reveals no expert consensus regarding a correction officer's risk of contracting HIV. Therefore, before labeling HIV as an occupational disease, we must consider whether a correction officer's risk of contracting

HIV is greater than the risk attending employment in general. See *Glodenis* v. *American Brass Co.*, supra, 118 Conn. 40–41. On the basis of the evidence adduced before the commissioner, I must conclude that it is not.

The expert testimony cited by the majority simply does not support its conclusion that ''the decedent's HIV infection constitutes an occupational disease because his employment as a correction officer in the emergency response unit was more likely to cause this disease than would other kinds of employment carried on under the same conditions.'' (Internal quotation marks omitted.) Specifically, I believe that the majority unduly discounts the highly probative fact that the only work-related HIV infection in the correction department involved a health care provider infected by a needle stick. It is undisputed that health care providers are at an increased risk of contracting HIV due to their routine collection of blood and bodily fluids for diagnostic purposes, as well as their systematic handling of syringes, needles, and other sharp instruments that could lead to potential blood-to-blood contact. By contrast, in the course of their duties, correction officers who are part of the emergency response unit may be exposed to blood and bodily fluids via splash incidents, which occur when the blood or bodily fluid of an infected person comes into contact with the skin or mucous membrane of a noninfected individual. As the majority notes, however, the statistical HIV infection rate for splash incidents involving HIV infected blood is 0.09 percent, while the infection rate for needle stick injuries is 0.3 percent. Thus, a splash incident is substantially less likely to result in transmission of HIV than a needle stick, and emergency response correction officers are much less likely to contract HIV than health care workers. I therefore agree with the compensation review board that the risk of HIV exposure from a splash incident is so minimal, fortunately, that it is not an increased hazard of employment.

My conclusion that, on the facts of the present case, correction officers who are members of emergency response units are not at an increased risk for HIV infection is buttressed by the facts of *Biasetti* v. *Stamford*, supra, 250 Conn. 73, in which a police officer contracted post-traumatic stress disorder/combat fatigue syndrome following a ''gun battle.'' *Biasetti*, I believe, is illustrative of the proper factual foundation for concluding that an occupation creates an increased risk of contracting a disease. A ''gun battle,'' in the employment context, is exclusive to those professions that utilize firearms in the regular course of their employment, namely, law enforcement officials and military personnel. In other words, the use of firearms, a necessary tool of law enforcement, makes post-traumatic stress disorder/combat fatigue syndrome more ''likely to result from that employment because of its inherent nature.'' *Madeo* v. *I. Dibner & Bro., Inc.*, supra,

121 Conn. 667. The present case is factually distinguishable from *Biasetti* because there is nothing inherent in the duties of correction officers who serve on emergency response units that makes them more likely to contract HIV than ''other kinds of employment carried on under the same conditions.'' Id.

Finally, I disagree with the majority's summary dismissal of relevant statistics suggesting that these correction officers are not at an increased risk, specifically, the fact that there has been only one documented case of occupational HIV infection in the department. The majority maintains that the absence of known instances of employment-related HIV cannot preclude classification as an occupational disease. I disagree that this highly probative fact can be ignored. Indeed, in *Glodenis*, this court stated that ''[e]vidence that lead poisoning would not naturally result from that particular kind of employment and that the hazard from it in that employment was not beyond that incident to employment in general would be proper. The fact that there were no known cases of lead poisoning among [employees] in other factories of the defendant where the same kind of work was being carried on as in that [particular factory] would be *relevant and material*.''[3] (Emphasis added.) *Glodenis* v. *American Brass Co.*, supra, 118 Conn. 41. The same can be said of the absence of employment-related HIV infection among correction officers who are members of emergency response units; the lack of reported cases is indeed ''relevant and material.'' Therefore, in assessing whether an increased likelihood of contraction exists among said correction officers, the dearth of HIV infection among them must be taken into account.

Accordingly, I respectfully dissent.

[1] This court's early decisions regarding the definition of an occupational disease, including *Glodenis*, *Madeo* and *LeLenko*, construed the relevant workers' compensation statute in effect at the time, i.e., General Statutes (1930 Rev.) § 5223. We note that § 5223, which defined an occupational disease as a disease ''peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such'' is, in pertinent part, identical to its successor, § 31-275 (15).

[2] Hazard is defined as ''[a] *risk* or peril, assumed or involved . . . in connection with . . . employment . . . .'' (Emphasis added.) Black's Law Dictionary (6th Ed. 1990). Accordingly, I use the terms ''hazard'' and ''risk'' interchangeably.

[3] I am mindful of our subsequent decision in *LeLenko* v. *Wilson H. Lee Co.*, supra, 128 Conn. 504, in which this court rejected a claim that a disease must be one that is ''usual or generally recognized . . . .'' This conclusion, however, does not mean that relevant statistics concerning a disease's prevalence within a given occupation cannot be considered. Rather, *LeLenko* merely indicates that prevalence alone is not dispositive of the issue. Prevalence certainly is indicative of an increased likelihood of contraction and should be considered as evidence of such.