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I. INTRODUCTION

The belief that employers are legally and morally obliged to make their employees "whole" after a work accident is a century honored tradition. Workers' compensation, the system for upholding this tradition, however, has come under attack in recent years. Historically, employers viewed the cost of workers' compensation insurance as a minimal burden and worth the expense of avoiding common law suits with employees.[1] This view is changing largely because insurance premiums are rising rapidly and employees are complaining about less than adequate coverage.[2]

One factor underlying the current dilemma is an increase in employee claims, and one type of claim outpacing all others relates to work stress. If the number of work stress claims can be viewed as a valid index, psychological disorders have become one of fastest growing occupational illnesses in recent years.[3] The National Council on Compensation Insurance argues that stress accounted for 14% of all occupational-disease claims by the end of the 1980s, a jump from 5% at the beginning of the decade.[4] Even more startling are the statistics in particular states. In California, for example, stress claims "increased 47 times faster than disabling-injury claims."[5]

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1. Nancy Kubasek & Andrea Giampetro-Meyer, *California's Radical Proposal: A Model for the Fifty States?*, 42 LAB. L.J. 173 (1991).

2. *Id.*

3. Michael J. McCarthy, *Stressed Employees Look for Relief in Workers' Compensation Claims*, WALL ST. J., Apr. 7, 1988, at 31.

4. *Id.*

5. *Id.*

The financial implications of this can be profound. It has been estimated that the overall health-care costs of stressful workplaces might be as high as $300 billion annually, a figure that exceeds the net income of all Fortune 500 companies.[6] The human costs of stress can be even greater as attested to by case studies of workers suffering from heart disease[7] or falling victim to stress-related violence from co-workers.[8]

In the midst of this, the courts have had to discern a framework for ruling on myriad workers' compensation cases involving stress related symptoms. The difficulties become apparent with issues of causation and responsibility for loss. From the outset, there is lack of clarity over the nature of stress and its causes. To illustrate, work stress may result from events outside the job or predisposition to stressors among workers.[9] While an accurate determination of cause and effect would seem essential to developing a consistent body of rulings, this goal remains elusive. Moreover, the courts are attempting to resolve these issues while, as a backdrop, workers' compensation systems in several states are hard pressed to remain solvent and the average cost for each claim exceeds $19,000.[10] The purpose of this article is to examine the present treatment of stress in the courts and analyze the implications of this treatment both for the courts and the institutions from which the stress cases arise. In Part II, workers' compensation law will be reviewed and the conditions differentiating compensation and tort cases will be contrasted.

Three types of stress claims will be discussed in Parts III, IV, and V. Mental-physical claims revolve around a mental stimulus resulting in a physical injury, for example constant work pressure leading to migraine headaches. Physical-mental claims, the second category, focus on physical trauma which results in mental injury such as a loss of limb leading to clinical depression. The last category, mental-mental, has generated the greatest controversy in the courts. Here one argues that a mental stimulus (i.e., perceptions of job pressures) has caused a psychological disorder such as anxiety. The underlying dilemma the courts face in these cases is that the cause and effect lack a concreteness, that is, both are psychological in nature. It is at this point that the courts must rule on concepts the psychiatric and psychological sciences are still debating.

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6. Michelle Osborn, *Stress: Can't Take It Anymore*, USA TODAY, Sept. 8, 1992, at 1B.
7. *Id.*
8. Larry Gerber, *Three Dead in Two Postal Shootings*, DENVER POST, May 7, 1993, at 2A.
9. JOHN M. IVANCEVICH & MICHAEL T. MATTESON, Stress and Work: A Managerial Perspective, 17 (1980).
10. Mark Fefer, *What To Do About Workers' Comp.*, FORTUNE, June 29, 1992, at 80.

Part VI discusses the relationship between current legal precedents and scientific standards in this area. Implications for court rulings as well as management practices are reviewed.

II. OVERVIEW OF WORKERS' COMPENSATION

Before the advent of workers' compensation statutes, an injured worker's only remedy was to sue the employer in tort. More than 80% of all injured workers received nothing[11] because of the numerous common law defenses.[12] Workers' compensation statutes were an attempt to solve some of the social and legal problems caused by employment injuries.

A. Typical Compensation Act

According to Arthur Larson, the recognized authority on the law of workers' compensation, the typical compensation act has the following common characteristics.[13] First, employees, in contrast to independent contractors, are automatically entitled to certain benefits when they suffer a "personal injury by accident arising out of and in the course of employment."[14] This concept of "personal injury" will be expanded upon in the next section.

Second, negligence and fault are generally not considered. Benefits can still be received by the employee, even in the absence of employer fault.[15] Because negligence is not relevant, the defenses to negligence are also not relevant.

Third, the benefits to the employee are minimal in comparison to potential tort damages.[16] They generally include wage benefits (usually one-half to two-thirds of the average weekly wage), hospital and medical expenses and death benefits for dependents.[17] Arbitrary limits on benefits are ordinarily imposed. For example, in Wyoming, an injured worker

11. *See generally*, Alexander R. Manson, *Workmen's Compensation and the Disabling Neurosis*, 11 BUFF. L. REV. 376 (1962).

12. 1 ARTHUR LARSON, THE LAW OF WORKMEN'S COMPENSATION § 4.30 (1993). Examples of defenses are contributory or comparative negligence and assumption of risk.

13. *Id.* § 1.10.

14. *Id.* The Wyoming statute varies in wording, but is essentially "typical." WYO. STAT. § 27-14-102(xi) (Supp. 1993).

15. 1 LARSON, *supra* note 12, § 1.10.

16. *Id.*

17. *Id.*

will receive two-thirds the statewide average monthly earnings for a period of twenty-four months for the complete loss of an eye.[18]

Fourth, in exchange for these small, but guaranteed, benefits, the employees forfeit their rights to sue the employers for damages for any injuries covered by the act.[19] The employees only retain the right to sue third persons who may have caused the injuries.[20] The proceeds of a successful tort action are usually first allocated to reimburse the employer for the compensation paid. Then the employee receives the balance.[21]

Last, employers are required to secure their liability through private insurance, state-fund insurance, or by self-insurance.[22] As employers reflect the compensation premiums in the price of their products, the burden of compensation liability does not remain upon the employer but passes to the consumer. In that way the public, not the injured worker or the employer, is burdened with the cost of work-related injuries.[23]

B. Personal Injury Defined

Wyoming statutes indicate that workers' compensation will be awarded when an employee suffers an injury that fits the following definition: "'Injury' means any harmful change in the human organism other than normal aging . . . arising out of and in the course of employment while at work in or about the premises occupied, used or controlled by the employer."[24] In construing the Workers' Compensation Act, the Wyoming Supreme Court has noted that "accident" and "injury" are not synonymous.[25] In fact, the court added, it would do violence to the Act to interpret it in a way that the words would be identical.[26] Accidents and injuries are two separate concepts. Usually or frequently accidents may cause injuries, or accidents may happen at the same time as injuries, but that is not always true.[27] Accidents and injuries may occur independently of each other.

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18. WYO. STAT. §§ 27-14-403(c) to 27-14-405(xxi) (1991).
19. 1 LARSON, *supra* note 12, § 1.10.
20. *Id.*
21. *Id.*
22. Depending upon the state, employers can purchase insurance from a private corporation, pay into a state created and maintained fund, or exhibit financial responsibility within the company.
23. 1 LARSON, *supra* note 12, § 1.10.
24. WYO. STAT. § 27-14-102(xi) (Supp. 1993).
25. *In re* Barnes, 587 P.2d 214, 218 (Wyo. 1978).
26. *Id.*
27. *Id.*

According to Larson, one of the best general definitions of "injury" can be found in an early Massachusetts decision.[28] "In common speech the word 'injury' as applied to a personal injury to a human being, includes whatever lesion or change in any part of the system produces harm or pain or a lessened facility of the natural use of any bodily activity or capability."[29] But, Larson notes, even with this very broad definition, the Massachusetts Supreme Court will not allow compensation for an injury that is only the result of ordinary "wear and tear."[30]

Approximately three-fourths of the states use the term "physical injury" in contrast to the use of "injury."[31] Based on the "physical injury" requirement, the Supreme Court of Nebraska refuses to compensate in the absence of physical harm to the body.[32] For example, the court denied compensation to a woman who was trapped in an elevator with a person who had been crushed to death between floors.[33] The court determined that there was no violence to the physical structure of her body even though it recognized that the shock to her nervous system was so great that she required hospitalization.[34] In contrast, a Texas court construed the exact statutory language of "physical injury" broadly. It determined that physical structure involves an entire interrelated, living, functioning organism, not just the body.[35] When that organism cannot function there is physical injury, even if the injury is not to a tangible body part.

C. Preexisting Condition

The Wyoming Supreme Court has observed that the compensation act makes no distinction between healthy or diseased employees.[36] An award is made for an injury that is a hazard of the employment even if the employee may have a genetic weakness or latent tendency for the

28. 1B ARTHUR LARSON, THE LAW OF WORKMEN'S COMPENSATION § 42.11(b) (1993).

29. In Re Burns's Case, 105 N.E. 601, 603 (Mass. 1914).

30. Zerofski's Case, 433 N.E.2d 869 (Mass. 1982). In this case the claimant, who had a broken toe approximately 15 years earlier, was consequently disabled by a leg ailment resulting from walking and standing on a concrete floor with the broken toe.

31. 1B LARSON, *supra* note 28, § 42.10.

32. Victoria L. Ruhga, Comment, *Mental Stress and Workers' Compensation in Nebraska*, 69 NEB. L. REV. 842, 847 (1990).

33. Bekeleski v. O.F. Neal Co., 4 N.W.2d 741 (Neb. 1942).

34. *Id.* at 743.

35. Bailey v. American Gen. Ins. Co., 279 S.W.2d 315 (Tex. 1955).

36. Exploration Drilling Co. v. Guthrie, 370 P.2d 362, 364 (Wyo. 1962) (citing *In re* Scrogham, 73 P.2d 300, 307 (Wyo. 1937); *In re* Frihauf, 135 P.2d 427, 432-33 (Wyo. 1943).

injury.[37] No distinction is made between employees regarding their state of health.[38]

In some instances, injured employees may exhibit personal predispositions to injuries or may have non-employment stresses that exacerbate the consequences of injuries. These employees are frequently referred to as "eggshell" claimants.[39] All states apply the eggshell doctrine to both physical and mental claims and do not allow the makeup of the claimants to affect their rights to compensation.[40] For example, mentally injured claimants are still compensated even if they have previously suffered psychological disabilities.[41]

D. Causal Connection

In Wyoming an injury is compensable if it "aris[es] out of and in the course of employment."[42] The causal connection between the injury and the employment is a question of fact[43] and exists "when there is a nexus between the injury and some condition, activity, environment or requirement of the employment."[44] The burden is on the employees to prove that their injuries arose in the course of employment.[45]

The various state laws regarding burden of proof and presumptions differ, but in the majority of states, like Wyoming, the worker will have the burden of proof and no presumptions will exist to help establish injury or causation.[46] The majority of states also apply an objective test to determine causation.[47] The objective test examines the

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37. *In re* Scrogham, 73 P.2d 300 (Wyo. 1937). For example, even if a worker has a family history of, and tendency for, heart disease, the worker is still compensated if the actual heart attack is related to employment.

38. Wright v. Wyo. State Training Sch., 255 P.2d. 211 (Wyo. 1953).

39. Katherine Lippel, *Workers' Compensation and Psychological Stress Claims in North American Law: A Microcosmic Model of Systemic Discrimination*, 12 INT'L J. L. & PSYCHIATRY 41, 53 (1989).

40. *Id.*

41. 1B LARSON, *supra* note 28, § 42.22(b).

42. WYO. STAT. § 27-14-102(xi) (Supp. 1993).

43. *In re* Van Matre, 657 P.2d. 815, 816 (Wyo. 1983).

44. *In re* Willey, 571 P.2d 248, 250 (Wyo. 1977) (citing Parrott v. Indus. Comm'n of Ohio, 60 N.E.2d 660 (Ohio 1945)).

45. *In re* Van Matre, 657 P.2d 815, 816 (Wyo. 1983).

46. *See* Lawrence Joseph, *The Causation Issue in Workers' Compensation Mental Disability Cases: An Analysis, Solutions and a Perspective*, 36 VAND. L. REV. 263, 289-304 (1983); Sara J. Sersland, *Mental Disability Caused by Mental Stress: Standards of Proof in Workers' Compensation Cases*, 33 DRAKE L. REV. 751, 758-96 (1983-84).

47. 1B LARSON, *supra* note 28, § 42.23(d).

type, duration, and intensity of stress affecting the employee.[48] In contrast, the subjective causal test allows compensation if the employee "honestly perceived" that a mental injury occurred in the course of employment.[49] In Part V of this article we will see that causation is particularly difficult to prove in mental-mental cases.

E. Compensation and Tort Law Contrasted

In order to understand current cases and to properly draft and interpret compensation legislation, lawyers, judges, and legislators must have a "correctly balanced underlying concept" of the nature of workers' compensation.[50] Larson stresses that both legislative and judicial errors in compensation law result from either the importation of tort ideas or the assumption that workers' compensation is like a personal health insurance policy.[51]

According to Larson most lawyers and judges are more prone to the first error, the importation of tort ideas.[52] They have difficulty in disregarding employees' misconduct which causes their own injuries, thereby allowing fault concepts to creep into compensation law.[53] They also improperly consider the doctrine of *respondeat superior* to hold the employer liable for intentional torts committed by supervisory employees and they are inclined to inappropriately view compensation as a type of strict liability tort.[54] For these reasons, it is important to illustrate the differences between compensation and tort law.

Fundamental differences between workers' compensation and tort liability must be recognized. First, only one question is appropriate to determine if there is a right to compensation benefits, i.e., was there a work-related injury? It is not appropriate to consider tort concepts of negligence and/or fault of either the employer or the employee.[55] The underlying social policy is to provide financial compensation to victims of work-related injuries.[56] The objective is to provide benefits in a way that is certain, dignified, efficient, and which passes the costs

48. *See* Graves v. Utah Power & Light Co., 713 P.2d 187, 190-93 (Wyo. 1986).

49. The subjective causal test was once applied in Michigan. *See* Dezial v. Difco Lab. Inc., 268 N.W.2d 1, 13 (Mich. 1978). Michigan statutes now prevent recovery under the subjective test. MICH. COMP. LAWS ANN. §418.301(2) (West Supp. 1993).

50. 1 LARSON, *supra* note 12, § 1.20.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* § 2.00.

on to society as part of the price paid for products.[57] Larson argues that workers' compensation is the only morally satisfactory solution to the problem of the injured worker.[58] Unless they are financially independent, two other alternatives available for disabled victims are begging on the streets or surviving on public welfare benefits.

Second, in contrast to workers' compensation, strict liability is generally limited to ultra-hazardous activities and has retained some defenses such as act of God, act of a third person, and assumption of risk. Compensation statutes make these defenses unavailable.

Third, strict liability provides compensation for injuries which are not disabling while workers' compensation is limited to injuries which produce disability and affect earning power. Therefore, the nature of the injury is relevant. In tort cases compensation would be made for injuries such as facial disfigurement, but generally injuries of this nature would not be covered under workers' compensation.

Finally, the amount of the compensation is significantly different. A tort recovery attempts to restore to workers whatever they have lost.[59] Workers' compensation is only designed to keep workers from destitution—to provide a minimal amount of money necessary for survival.[60] Also, tort recovery often includes punitive damages to punish the employer for wrongdoing.[61] In contrast, workers' compensation is not intended to penalize the employer; the cost can be passed on to the consumer. In summary, Larson states that "tort litigation is an adversary contest to right a wrong between the contestants; workers' compensation is a system, not a contest, to supply security to injured workers and distribute the cost to the consumers of the product."[62]

III. MENTAL-PHYSICAL CLAIMS

In this category, physical illness or injury results from a mental or psychological occurrence. For example, if an employee witnessed an accident in which another employee is injured, the bystander employee may also suffer physical consequences because of the shock or

57. *Id.* § 2.20.
58. *Id.*
59. *Id.* § 2.50.
60. *Id.*
61. *Id.*
62. *Id.* § 2.70.

scare experienced. In this mental-physical category, claims are compensable in all states.[63]

In many cases the resulting physical injury is heart attack.[64] Other examples of the typically serious injuries are ulcers,[65] ruptured aneurysm[66] and cerebral hemorrhage.[67]

The category is a little more controversial when the mental stimulus is considered. Some states only compensate when the stimulus is sudden, while others allow compensation for gradual mental stimulus.[68]

A. Sudden Stimulus

The connection between the mental stimulus and the physical injury is easiest to prove if the physical consequences immediately follow a sudden, brief stimulus. For example, heated arguments at work often immediately precede heart attacks or strokes.[69] Sudden noises or flashes,[70] accidents or near-accidents[71] and other unusual work-related occurrences[72] are examples of mental stimuli that have resulted in physical injury or death. In two cases, extreme fright

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63. 1B LARSON, *supra* note 28, § 42.21(a).

64. *See, e.g.*, Lamb v. Workmen's Compensation Appeals Bd., 520 P.2d 978 (Cal. 1974) (emotional stress due to overwork resulted in heart attack); McDonough v. Connecticut Bank & Trust Co., 527 A.2d 664 (Conn. 1987) (worker's perception of unjust criticism of work resulted in heart attack); Donato v. Pantry Pride (Food Fair), 438 A.2d 1218 (Conn. Super. Ct. 1981) (stress due to a sizeable cash shortage resulted in heart attack); Harris v. Rainsoft of Allen County, Inc., 416 N.E.2d 1320 (Ind. Ct. App. 1981) (employee suffered heart attack while watching the business burn).

65. Travelers Ins. Co. v. Heidelberger, 593 S.W.2d 70 (Ark. Ct. App. 1980) (work-related tension caused ulcers); Egeland v. City of Minneapolis, 344 N.W.2d 597 (Minn. 1984) (policeman developed a stress-induced ulcer).

66. Snyder v. San Francisco Feed & Grain, 748 P.2d 924 (Mont. 1987) (an employee suffered a ruptured aneurysm following a time of unusual stress in her job).

67. Egan's Case, 116 N.E.2d 844 (1954) (a taxi driver suffered a cerebral hemorrhage four days after a police officer requested his assistance with three apprehended men).

68. 1B LARSON, *supra* note 28, § 42.21(a).

69. *See, e.g.*, Ferguson v. HDE, Inc., 270 So.2d 867 (La. 1973); Cabe v. Union Carbide Corp., 644 S.W.2d 397 (Tenn. 1983); Black v. State, 721 S.W.2d 801 (Tenn. 1986).

70. *See, e.g.*, Roberts v. Dredge Fund, 232 P.2d 975 (Idaho 1951); Charon's Case, 75 N.E.2d 511 (Mass. 1947); Moray v. Indus. Comm'n, 199 P. 1023 (Utah 1921).

71. *See, e.g.*, George L. Eastman Co. v. Indus. Accident Comm'n, 200 P. 17 (Cal. 1921); Marotte v. State Compensation Ins. Fund, 357 P.2d 915 (Colo. 1960); Miller v. Bingham County, 310 P.2d 1089 (Idaho 1957); J.N. Geipe, Inc. v. Collett, 190 A. 836 (Md. 1937); Reynolds v. Public Serv. Co-ordinated Transp., 91 A.2d 435 (N.J. Super. Ct. App. Div. 1952).

72. Schwartz v. Hampton House Management Corp., 221 N.Y.S.2d 286 (1961) (an employee had to continue to operate an elevator in a smoke-filled building); Kinney v. State Indus. Accident Comm'n, 423 P.2d 186 (Or. 1967) (one employee attempted to rescue another from an elevator shaft).

resulted in heart attacks. The facts reveal the extremes in stimulus that can result in compensable injury. One employee had a heart attack when robbers threatened to throw acid into his face.[73] Another, apparently more vulnerable employee, suffered heart failure when he had to have a splinter removed.[74]

B. Gradual Stress

Larson notes, "[t]he character of the case does not change in kind but only in degree when the stimulus takes the form of sustained anxiety or pressure leading to heart attack or cerebral hemorrhage."[75] The typical case is exemplified by the modern executive, who, at a very young age, succumbs to anxiety and worry associated with employment. In *Klimas v. Trans Caribbean Airways, Inc.*,[76] the estate of a thirty-three year-old director of maintenance and engineering for a small airline was compensated for a fatal heart attack after the head of the company pressured him by setting a project deadline and hinted at firing him. Three judges dissented in the opinion, expressing concern with allowing compensation for mere "anxiety and worry."[77] Larson was critical of the dissent, indicating that semantics may have been the problem. Larson speculates that if the words "fright" or "excitement" had replaced "anxiety and worry" the dissent would not have had a concern.[78] "Evidently what the dissent really wanted, but did not quite say, was that the anxiety and worry should be neatly crammed into a very short period of time; but . . . there is no real validity to this distinction between sudden and protracted injuries."[79]

There are a number of similar cases in which gradual stress resulted in physical damage. An overworked claims adjuster suffered angina pectoris.[80] After sixty-five days of tension, a negotiator suffered stroke and paralysis.[81] Job pressures caused a cerebral thrombosis in an insurance commissioner.[82] Heart attacks have been the result

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73. *In re* Weiner's Case, 186 N.E.2d 603 (Mass. 1962).

74. Yunker v. West Leechburg Steel Co., 167 A. 443 (Pa. Super. Ct. 1933).

75. 1B LARSON, *supra* note 28, § 42.21(c).

76. 176 N.E.2d 714 (N.Y. 1961), *rev'g* 207 N.Y.S.2d 72 (1960).

77. *Id.* at 717-19.

78. 1B LARSON, *supra* note 28, § 42.21(c).

79. *Id.*

80. Hoage v. Royal Indem. Co., 90 F. 387 (D.C. Cir. 1937), *cert. denied*, 302 U.S. 736 (1937).

81. Fireman's Fund Indem. Co. v. Indus. Accident Comm'n, 241 P.2d 299 (Cal. Ct. App. 1952), *aff'd*, 250 P.2d 148 (Cal. 1952).

82. Insurance Dept. of Miss. v. Dinsmore, 102 So.2d 691 (Miss. 1958), *aff'd*, 104 So. 2d 296 (Miss. 1958).

of clerical errors[83] and unbalanced books.[84] In none of these cases could a specific occurrence be pinpointed, yet all the injuries were compensable.

IV. PHYSICAL-MENTAL CLAIMS

In this category, a physical occurrence results in a mental or emotional disability. For example, an employee may be physically injured in a workplace accident. Although the physical injuries heal, the employee is unable to return to work because of emotional anxiety created by the accident.[85]

A. Status

Larson very eloquently observes:

> [W]hen there has been a physical accident or trauma, and claimant's disability is increased or prolonged by traumatic neurosis, conversion hysteria, or hysterical paralysis, it is now uniformly held that the full disability including the effects of the neurosis is compensable. Dozens of cases, involving almost every conceivable kind of neurotic, psychotic, psychosomatic, depressive, or hysterical symptom, functional overlay, or personality disorder, have accepted this rule.[86]

Larson continues, "[t]here is almost no limit to the variety of disabling 'psychic' conditions that have already been recognized as legitimately compensable . . . ."[87] He then cites four cases that he considers to be "at the edge." In one of them, *Baker v. Wendy's of Mont., Inc.*,[88] the Wyoming Supreme Court held that a nervous injury resulting from the physical trauma of the employer's sexual advances and touching was compensable.[89] In New York, an employee was bitten by a cat and developed a compensable psychoneurotic fear of

83. Little v. J. Korber & Co., 378 P.2d 119 (N.M. 1963).

84. Coleman v. Andrew Jergens Co., 168 A.2d 265 (N.J. 1961).

85. Lee v. Lincoln Cleaning & Dye Works, 15 N.W.2d 330 (Neb. 1944) (while ironing a woman received an electric shock to her arm and subsequently lost the use of her arm due to a neurotic condition).

86. 1B LARSON, *supra* note 28, § 42.22(a).

87. *Id.*

88. 687 P.2d 885 (Wyo. 1984).

89. *Id.*

rabies.[90] In Maryland, a claimant was compensated for neurasthenia when he believed his injured backbone was relentlessly decaying.[91] In Florida, a woman was compensated for neurosis when a slight bump on her head made her relive the death of her son.[92]

B. History

For over fifty years, courts have recognized mental injuries that follow as a natural and direct cause of a previously compensable physical injury.[93] In recognizing the compensability of the physical-mental claims, courts have relied upon the existence of the physical cause to assist in ensuring the validity of the mental injury and its causal relationship to the physical cause.[94] Even when the claimants suffer from preexisting mental conditions their claims are compensable if the conditions are aggravated by physical injuries at work.[95]

V. MENTAL-MENTAL CLAIMS

Although exceptional situations exist, the law is fairly well settled in the "mental-physical" and the "physical-mental" categories. Larson postulates, "[i]n each of the two above categories, there is something to satisfy the old-fashioned legal insistence upon something 'physical.'"[96] However, the third category of claims, the "mental-mental," is a controversial topic. In this category, emotional or psychological disabilities are the result of emotionally or psychologically induced stress. For example, in a recent Wyoming case, an employee alleged that a stressful work environment caused her migraine headaches.[97] Although she agreed that the job itself, monitoring and operating the plant's pollution control equipment, was not stressful, she argued that her strained relations with co-workers intensified her headaches. The court did not find her arguments persuasive.

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90. Kalikoff v. John Lucas & Co., 67 N.Y.S.2d 153 (1947).

91. Bramble v. Shields, 127 A. 44 (Md. 1924).

92. Watson v. Melman, Inc., 106 So. 2d 433 (Fla. Dist. Ct. App. 1958).

93. Kurt Lamp, Note, *Mental Stress Claims in North Dakota: Evaluating the Compensability of Mental Stress Claims Under North Dakota Workers' Compensation Law*, 69 N.D. L. REV. 369, 374 (1993).

94. *Id.*

95. *Id.* at 375.

96. 1B LARSON, *supra* note 28, § 42.23.

97. Graves v. Utah Power & Light Co., 713 P.2d 187 (Wyo. 1986).

Because workers' compensation statutes are state legislation, and are therefore litigated in state courts, a variety of court decisions are based on an even greater variety of reasons. The unfortunate result is that no general rules have been established to offer guidance to employers.

To date, courts in twenty-nine states and the federal courts will allow workers' compensation recovery for mental-mental claims.[98] A few states have specifically refused to allow recovery.[99] The remaining states have not yet addressed the issue.

A. Noncompensable Claims

To date, courts in eight states have specifically refused to allow compensation for purely mental claims.[100] Although many of them have recognized the trend to compensate work-related stress, they have felt constrained by the definition of "physical injury" in their state statutes.[101] In these states an employee can recover for stress injuries only if the claim can be classified other than mental-mental.[102] Sometimes the factual situations are not easily distinguishable.

For example, two ambiguous claims involved injuries that could have been classified as physical or mental. If the injuries were classified as physical they would have been compensable, but they were determined to be mental-mental claims and therefore were not compensable. In the first case, a high school principal suffered a nervous breakdown which included weight loss, insomnia and loss of control of his temper.[103] This breakdown resulted from increased duties, responsibilities, problems and stress.[104] In a similar case a workaholic suffered from incapacitating anxiety, stomach cramps, hand tremors and facial tics.[105] Because the court did not recognize the tics, tremors, and cramps as physical injuries, but viewed them as manifestations of mental problems, the claim was denied.[106] However, in contrast, recovery was allowed in a case where the court determined that

98. 1B LARSON, *supra* note 28, § 42.23. See also app. A.
99. 1B LARSON, *supra* note 28, § 42.23.
100. *Id.*
101. *Id.*
102. *Id.*
103. Lockwood v. Indep. Sch. Dist. No. 287, 312 N.W.2d 924 (Minn. 1981).
104. *Id.*
105. Johnson v. Paul's Auto & Truck Sales, 409 N.W.2d 506 (Minn. 1987).
106. *Id.* at 508.

a physical trauma caused mental depression.[107] An employee suffered from tinnitus[108] after working close to a jackhammer for a week.[109] The prolonged tinnitus resulted in a disabling depression. Because the claim was classified as physical-mental, instead of mental-mental, recovery was allowed.[110]

The facts in these three cases demonstrate how crucial the classification of the facts can be. If the courts in the first two cases had classified the injuries as physical, instead of mental, recovery on the claims would have been allowed.

B. Traumatic Incident Compensable Claims

When mental-mental claims are recognized as compensable by a state court, the issue of causation invariably arises. Courts are uneasy when no physical element is present to establish the extent or the cause of the injury.[111] The cases are complicated by the fact that there are multiple, mixed causes of injuries which makes it hard to distinguish valid claims from malingering. Because there are often no observable symptoms, it is difficult to make an objective judgment on whether the suffering really exists. The courts have set different threshold barriers in an attempt to clarify the validity of the claims.

Of the state courts that allow purely mental claims there are two distinct divisions. In the most restrictive division the courts allow mental-mental claims only if the mental injury was caused by a specific psychologically traumatic incident such as the witnessing of the death of a co-worker combined with the fear of imminent death of the employee himself.[112] In these "traumatic event states," mental injuries caused by gradual stress are not compensable.[113] For example, if an employee suffers from anxiety, depression, nervousness, and vertigo[114] as the result of working 50-90 hours per week for a period of several months, his mental injuries are not compensable under workers' com-

107. Dotolo v. FMC Corp., 375 N.W.2d 25 (Minn. 1985).

108. Tinnitus is a ringing in the ears. It is generally described as a subjective feeling of noise in the head that has no objective symptoms.

109. *Dotolo*, 375 N.W. 2d at 27.

110. *Id.*

111. 1B LARSON, *supra* note 28, § 42.23. *See also,* Joseph, *supra* note 46, at 289.

112. Bailey v. American Gen. Ins. Co., 279 S.W.2d 315 (Tex. 1955).

113. 1B LARSON, *supra* note 28, § 42.23(a). See also app. A.

114. Vertigo is faintness or lightheadedness.

pensation.[115] In this group, mental-mental injuries are compensated only when caused by sudden, traumatic mental stimuli.[116]

C. Gradual Stimulus Compensable Claims

In the second division, the states which allow recovery for gradual stress claims, there are subdivisions based on whether the stress was "unusual" or "ordinary" stress.

1. Unusual Stress

In 1984, the Wyoming Supreme Court chose the unusual gradual stress standard to determine compensability of mental-mental claims.[117] The case, *Consolidated Freightways v. Drake*,[118] involved a truck driver who suffered a mental breakdown and depression. Until 1980 he held the position of "bid driver." This status entitled him to a fixed schedule on an assigned route with regular days off.[119] As a result of a corporate reorganization he was forced to relocate and take a position as an "extra-board" driver. Then he was on call twenty-four hours a day.[120] He was only paid when he was called to work. His private and family life was in a turmoil.[121] After working as an extra-board driver for a year, he began to suffer from fatigue and physical problems.[122] Finally, two years after his relocation, he was again assigned as a bid driver, but lost the status again in three months.[123] He mentally collapsed shortly after being reassigned to extra-board duty.

In deciding *Consolidated Freightways*, the Wyoming Supreme Court said that a worker can recover for slowly developing mental injuries only if the injuries result "from a situation or condition in employment that is of greater magnitude than the day-to-day mental stresses and tensions all employees usually experience."[124] A student commentator criticized this standard as being unclear,[125] asking what

115. Transp. Ins. Co. v. Maksyn, 580 S.W.2d 334 (Tex. 1979).

116. *See, e.g.*, Jose v. Equifax, Inc., 556 S.W.2d 82, 84 (Tenn. 1977) (holding that sudden stimulus includes "fright, shock or even excessive unexpected anxiety").

117. Consol. Freightways v. Drake, 678 P.2d 874 (Wyo. 1984).

118. *Id.*

119. *Id.* at 875.

120. *Id.*

121. *Id.*

122. *Id.* at 876.

123. *Id.*

124. *Id.* at 877.

125. Richard K. Mueller, Note, *Workman's Compensation--A Confusing Double Standard for*

the phrase "all employees" means?[126] Does it mean other employees working the same or similar jobs, i.e., fellow employees? Or does the standard embrace the working world at large?

The truck driver was not forced to tolerate unusual stress when compared to his fellow truck drivers, but in comparison to the rest of the working world, the extra-board status could be classified as unusually stressful. The majority of the court allowed compensation, comparing his job stress with those in "daily life" and those that are "ordinary day-to-day" pressures.[127] The dissent argued that the majority had not correctly applied the adopted rule to the facts of the case.[128] The truck driver should have been compared to his co-workers. Then his stress would not have appeared to be unusual.

In a later decision, the Wyoming Supreme Court referred to *Consolidated Freightways* and attempted to explain its reasoning:

> We then held, in Consolidated Freightways, that the facts of that case supported a finding that the non-traumatically induced injury *resulted from a situation of greater dimensions than the worker's day-to-day mental stresses and tensions that were a part of his daily work life and therefore his injury was compensable.*[129]

However, the student commentator remarked, "the explanation . . . only adds to the confusion and raises the question of whether the court applied the 'all employees' test at all."[130]

In addition to the criticism of the unclear standard, the commentator also charged the court with applying a double standard.[131] He contended that the unusual stress rule is not consistent with prior Wyoming law on work-related injuries. The standard for mental-mental cases is different and more rigorous than for physical injuries. It does not protect the eggshell, the person who is particularly vulnerable, although previous decisions dealing with physical injuries do. Recall the definition of injury as articulated by the court. Essentially it said that compensation is not contingent upon the health or condi-

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Mental Injuries, 20 LAND & WATER L. REV. 287 (1985).

126. *Id.* at 293-94.

127. *Consolidated Freightways*, 678 P.2d at 877-78.

128. *Id.* (Brown, J., dissenting).

129. Baker v. Wendy's of Mont. Inc., 687 P.2d 885, 891 (Wyo. 1984) (emphasis added).

130. Mueller, *supra* note 125, at 294.

131. *Id.* at 295.

tion of the injured employee. Even if the "eggshell" is the only one to suffer in a particular situation, the injury should be compensated. A history of epilepsy or a congenital predisposition to hernias will not preclude compensation, but the unusual stress standard will preclude compensation for a person with a predisposition to depression.[132]

In its decision in *Graves v. Utah Power and Light Co.*,[133] the Wyoming Supreme Court responded to the charge of setting unclear double standards for mental-mental compensation:

> We adopted our position deliberately; and, after due consideration of the alternatives, we do not think it is at all confusing. An especially sensitive worker, the so-called eggshell, can receive compensation for a *physical* injury if ordinary work conditions cause the injury. On the other hand, when *nontraumatic mental* injuries are involved, the eggshell is eligible for compensation only if he can show that extraordinary work conditions caused the injury.[134]

The court recognized that there are other considerations for determining compensability, but determined that three common-sense reasons outweighed them.[135] First, if the judiciary allowed employees to recover for mental injury that was triggered by every-day stress, then almost all mental injuries would be compensable.[136] Job stress contributes to the problems of almost everyone. Second, the judiciary has difficulty distinguishing between legitimate mental claims and malingering.[137] As noted earlier, it is easier to see the causation if the injury arises from unusual stress. Third, the unusual stimulus standard balances the interests of the employee and the employer and maintains the integrity of the policy and intent of the workers' compensation laws.[138]

The court then explicitly delineated the group called "all employees."[139] It determined that the most rational approach is to compare the stress of the injured employee with "the day-to-day stress encountered by workers in the same or similar jobs regardless of their em-

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132. *Id.* at 296.
133. 713 P.2d 187 (Wyo. 1986).
134. *Id.* at 191 (citations omitted).
135. *Id.* at 192.
136. *Id.*
137. *Id.*
138. *Id.*, (citing Consol. Freightways v. Drake, 678 P.2d 874, 877 (Wyo. 1984)).
139. *Id.* at 192-93.

ployers."[140] This standard can account for the worker who has no co-workers and will protect the employees who are all put under unusual stress when compared to other similar employment situations. Excessive stress for all employees in a particular company will not serve as a defense when only one eggshell cracks.

The court argued that the rationale of the holding was in accord with the policy of workers' compensation. Additionally, it was noted that workers' compensation is a form of industrial accident insurance, not a full coverage health insurance.[141] Essentially this means that workers' compensation is designed only to compensate for work-related injuries, not any illness a worker happens to suffer.

The courts in Maine have created an alternative test that protects even the eggshell with mental-mental injuries.[142] To recover on a stress claim the injured employee must prove:

1. The injury was the direct result of unusual stress generated by the job; or
2. The injury was predominantly caused by the ordinary stresses of the job (but recovery for ordinary stress is allowed only when the ordinary stress is combined with an employee predisposition to mental injury); or
3. The injury was predominantly caused by the combination of unusual and ordinary stresses.[143]

Even though they didn't face unusual stress, the Maine workers can be compensated if they can show, by clear and convincing evidence, that normal work stress was the predominant cause of the injury.[144]

Examples of unusual stress, as required by point one above, include the required attendance of a week long sensitivity group training seminar which resulted in an acute schizophrenic episode.[145] A woman who was the first female state trooper in her state was also successful in proving unusual stress. She required hospitalization for her mental anxiety.[146] To prove a case under point two above, em-

140. *Id.* at 193.

141. *Id.* at 190.

142. Townsend v. Maine Bureau of Pub. Safety, 404 A.2d 1014, 1019-20 (Me. 1979).

143. *Id.*

144. *Id.* The Wyoming court considered the Maine alternative but rejected it as being in violation of the Wyoming statutes. Graves v. Utah Power & Light Co., 713 P.2d 187, 192 n.4 (Wyo. 1986).

145. McLaren v. Webber Hosp. Ass'n, 386 A.2d 734 (Me. 1978).

146. *Townsend*, 404 A.2d at 1020.

ployees who are predisposed to mental injury, and who are seeking to recover for ordinary work-related stress, must meet a higher evidentiary standard. They must produce clear and convincing evidence—not just a preponderance of the evidence—relating the stress and injury.[147]

2. Ordinary Stress

Currently ten states will allow workers' compensation recovery for claims based on ordinary, gradual stress.[148] The courts in these states reason that any worker incapacity which results from conditions arising out of the employment situation should be compensated.[149] Under this reasoning courts have allowed claims for stress resulting from adverse job performance evaluations[150] and inter-company departmental transfers.[151] However, following these types of decisions, at least two states have amended their workers' compensation statutes. One state no longer allows compensation for ordinary stress at all.[152] In addition to the limitation on ordinary stress the amended statute also requires: (1) that the employee stress must be evaluated according to objective standards, not by employee perceptions, and (2) that the claim is not compensable if the stress results from employer disciplinary actions, transfers, layoffs or terminations.[153] A second state legislature agreed that emotional disabilities resulting from personnel actions are not compensable.[154]

VI. ORGANIZATION IMPLICATIONS

The purpose of this section is to examine how the legal framework for determining the appropriate stress claim fits within the psychological and psychiatric literature on stress. In addition, the managerial or practical implications of dealing with stress in the workplace will also be explored.

147. *Id.*
148. 1B LARSON, *supra* note 28 § 42.23. See also app. A.
149. 1B LARSON, *supra* note 28 § 42.23.
150. Pomerleau v. United Parcel Serv., 464 A.2d 206 (Me. 1983).
151. Kelly's Case, 477 N.E.2d 582 (Mass. 1985).
152. ME. REV. STAT. ANN. tit. 39, § 201 (Supp. 1993).
153. *Id.*
154. MASS. GEN L. ch. 152, § 29 (1988 & Supp. 1993).

A. Legal and Scientific Understanding

Arguably, stress has been the most researched topic in the behavioral and medical sciences in recent years. In 1970, academic journals averaged less than 50 stress related articles annually.[155] By 1987, that total had risen to 700 annually.[156] Intuitively, it seems reasonable to assume this body of scientific work has import for the courts. It is not the intent here to review the extant stress literature, but rather to highlight conceptual issues that relate directly to the types of rulings the courts have rendered.

1. Stress as an occupational disease.

The idea of occupational disease implies disability resulting from prolonged exposure.[157] Classic examples of this would be silicosis in the asbestos industry. In such cases, workers are repeatedly exposed to the peculiar risk factors in their environment and eventually succumb to them.

This framework has direct implications for gradual stress claims. Essentially, failure to accept gradual stress claims, as some jurisdictions do, denies the occupational disease model. For example, some states require that a stress reaction stem from a verifiable event.[158] This logic, however, fails to include the element of time which is central to many theoretical models of stress.

For example, Selye's classic work on the General Adaptation Syndrome suggests that all organisms are capable of resisting stressors, but the temporal aspects of how these stressors appear in one's environment is critical.[159] To illustrate, tax accountants are under considerable pressure in March and April of each year as clients rush to meet filing deadlines. This case, in which the environmental stressors are pinpointed in time, differs from a secretary who may be required to accept a supervisor's pressure or abusive management style. The tax accountants' dilemma will pass naturally with time while the secretary's situation will persist.

155. Stephen R. Barley, Toward a Cultural Theory of Stress 33 (Sept. 1990) (on file with School of Industrial Relations, Cornell University).

156. *Id.* at 57.

157. JOHN V. NACKLEY, PRIMER ON WORKERS' COMPENSATION 27-28 (1989).

158. See app. A for list of states that do not accept gradual stress claims.

159. HANS SELYE, THE STRESS OF LIFE 87-88 (1956).

What does this have to say about gradual stress? Research indicates that ability to resist stressors is reduced over time, and that repeated exposure will reduce resistance.[160] In other words, the legal notion in some jurisdictions that a stress reaction must stem from a single traumatic event does not fit within the scientific understanding of the etiology of stress reactions.

If we recognize that stress reactions can be an occupational disease—an illness that results from repeated exposure to a stimulus—then we are obliged to accept gradual stress claims. Failure to do so demonstrates an insensitivity to the cumulative emotional problems that stem mainly from exposure to adverse psychosocial conditions over time. A potential side effect for the courts is that the failure to recognize gradual stress may force some employees to "stretch" the facts of their cases, hoping to convince the court that their situations rest on a single causative event. This, in turn, may reinforce the air of distrust that surrounds many stress claims.

2. The extraordinary circumstances argument.

As noted earlier, claimants may have to demonstrate that their work situation was uniquely more stressful than expected in order to prove the disability arose out of employment. This reasoning establishes a hurdle for the claimant to overcome, the intent being to prevent an overwhelming number of stress claims passing muster in the courts. The paradox associated with this is that certain jobs are by their nature highly stressful. That is, scientific research suggests there is a taxonomy of stressful environments at work, and under certain circumstances "ordinary" conditions can cause stress reactions.[161]

For example, studies indicate certain service jobs are inherently more stressful than other lines of work.[162] In fact, stress resistance has been identified as a key worker ability for performing well at jobs involving customer contact or computerized information systems.[163] We must, therefore, ask if it is reasonable to require nurses, police officers or similar type employees to demonstrate their situations are

160. *Id.*

161. A. Herrman, *Sudden Death and the Police Officer*, ISSUES IN COMPREHENSIVE PEDIATRIC NURSING, 327-32 (1989). Litchfield, *Stress Related Problems of Dentists*, INT'L. J. OF PSYCHOSOMATICS, 41-44 (1989). McGrath, Reid, Boore, *Occupational Stress in Nursing*, INT'L. J. OF NURSING STUDIES, 343-58 (1989).

162. Philip E. Varca, *Power, Policy, and the New Service Worker*, 1 MGMT. MARKETING 49 (1992).

163. *Id.*

"extraordinary" when it is documented that the normal work environment *is* more stressful relative to *all* other jobs. This logic, employed in certain jurisdictions, puts workers in stressful occupations at a disadvantage: Not only must they work under difficult circumstances, they must work under circumstances that are out of the ordinary for their already extreme environments in order to prove a claim.[164]

In sum, even a cursory review of the scientific literature suggests that precedents in several jurisdictions violate our theoretical understanding of the etiology of stress reactions. Specifically, the notion that gradual stress claims should not be heard contradicts research demonstrating that stress reactions are often the result of gradual breakdown and not traumatic events.[165] Also, the reasoning that workers must suffer conditions greater than their fellow employees before their claims are valid denies the fact that some occupations are fundamentally stressful, and thus emotional disability could result from exposure to the day-to-day work environment.

Arguably in the hope of establishing thresholds that reduce the number of illegitimate cases, the courts have developed an erratic set of rulings for stress claims under workers' compensation which may increase the prevalence of tort suits in the future, and may also generate interest in a national policy on work stress. It would be unfair, however, to single out the courts in this scenario. Society's institutions and more specifically the management of these institutions directly impacts the incidence of stress in the work environment.

B. Employer Implications

In theory, employers could reduce stress claims by hiring individuals who are unlikely to file them, that is, screen job candidates for stress resistance and hire only those who will withstand the pressures of work. This solution, however idyllic it may seem, is unreasonable. While people do differ in their susceptibility to stressors, there is no reliable or valid method for measuring this predisposition. Moreover, that a person appears resistant to stress at a given point in time is no guarantee for the future. For example, changes in life circumstances outside of work can leave individuals vulnerable to work stress.[166] Unfortunately, there is no way to predict when certain

164. See app. A for a list of states requiring the extraordinary situation argument for accepting stress claims.

165. SELYE, *supra* note 159.

166. ALAN A. MCCLEAN, WORK STRESS 65-67 (1979).

life events such as a divorce will bring on a stress reaction. In sum, employers will need to manage their institutions knowing that over time some human beings do succumb to stress. The challenge then for employers is developing practices that help employees handle stress at work.

This idea is not novel and, in fact, organizations are avoiding the onset of stress through various management practices, in other words, taking a prevention approach. Along these lines, the work on job design appears highly related to the incidence of stress.[167] When workers are delegated enough authority to decide how to conduct their tasks, and receive feedback when tasks are successfully completed, they are likely to deal more positively with the pressures of their jobs.[168] The key concept appears to be control—having the flexibility to alter one's work procedures to handle problems and overloads.

This idea of control also pertains to decision making. Active participation in an institution's problem solving process increases employees' commitment to carrying out decisions and creates a socially supportive environment which may serve as a buffer to work stressors.[169] It is here that the irony of modern management seems to lie. While researchers suggest that pressures associated with recent technologies (i.e. computer information systems) result in increased work stress, it is time-honored principles of management such as delegation, participative decision-making and supportive leadership that seem to abate the stress effects. To oversimplify the matter, many stress prevention strategies are just good management practices. Even the most effectively managed institutions have to confront the stresses of a modern work environment. In addition to good management practices, another method for doing this focuses on coping or reducing the negative effects of job stress. A number of companies have developed "wellness" programs.[170] In general, these efforts are focused on giving employees the tools for handling stressful work events such as smoking cessation classes.[171] Perhaps the key characteristic, however, is that the programs formally recognize stress at work as something to deal with by providing a "place" for doing this. At Sara Lee, for example, the company has paid for developing hiking trails at its rural

167. RICHARD HACKMAN & GREG OLDHAM, WORK REDESIGN 43-65 (1980).

168. ROBERT KAHN ET. AL., ORGANIZATIONAL STRESS: STUDIES IN ROLE CONFLICT AND AMBIGUITY, (1964).

169. JAMES S. HOUSE, WORK STRESS AND SOCIAL SUPPORT 7 (1981).

170. Marjory Roberts and George Harris, *Wellness at Work*, PSYCHOLOGY TODAY, May 1989, at 54.

171. *Id.* at 56.

plants or subsidizes membership fees for health clubs in its urban locations.[172]

These stress management techniques are a relatively new phenomenon. Although there are few studies verifying the efficacy of these interventions, it is likely organizations will continue efforts in this direction. Interestingly, one impetus for this movement may stem from the federal government's recent interest in occupational stress.

The National Institute of Occupational Safety and Health (NIOSH) has formed a working group to examine psychological disorders in the workplace, and develop a plan for the prevention of such disorders.[173] The group has suggested improved working conditions through job design as a primary preventative strategy. Specifically, the group advocates examining work load, work schedule, job security factors, and interpersonal relations as sources of stress, and areas for potential improvement.[174]

Related to this, the NIOSH group has also proposed developing a national data base for assessing the extent of psychological disorders in the workplace, and related causative job risk factors.[175] Although these suggestions are not at the policy-making level at this time, it appears that other agencies within NIOSH such as the Centers for Disease Control are also concerned with occupational mental health, and that this is an issue for the 1990's.[176]

At one level, it could be argued that managers should leave heady issues like occupational mental health and job stress to the scientists, at least until there is more clarity in the area. On the other hand, managers have been concerned historically with the level of motivation and job commitment among their employees, and the financial costs of poor business practices. To the extent that the rise in stress claims suggests workers do not believe their jobs are what they should be, and their ability to find redress within their organizations is not what it should be, management will continue to be concerned with these issues.

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172. *Id.* at 58.

173. Steven L. Sauter et. al., *Prevention of Work-related Psychological Disorders*, 45 AM. PSYCHOLOGIST 1146-48 (1990).

174. *Id.* at 1150.

175. *Id.* at 1152-53.

176. J.D. Millar, *Mental Health and the Workplace*, 45 AM. PSYCHOLOGIST 1165-66 (1990).

VII. CONCLUSION

Although a review of the courts' treatment of stress in worker compensation cases suggests a degree of confusion, certain areas do appear settled. The fundamental differences between workers' compensation and tort cases are clarified. Also, the rulings in physical-mental and mental-physical claims are fairly predictable.

On the other hand, there remains an element of confusion over mental-mental claims. What are the issues that remain unresolved here? Clearly, the debate over subjective versus objective cause will not end soon. The elusive nature of having both a psychological stimulus and psychological outcome has been troubling. As noted earlier, the courts have greater comfort with tangibles, for example the loss of a limb being the causal factor in a nervous breakdown.

In a related way, the Wyoming case, *Consolidated Freightways v. Drake*, illustrates the subjectivity dilemma again. Forcing workers to argue that their cases are unusual relative to a benchmark group gives the process an appearance of objectivity. This rule, however, denies the role of individual perception in stress reaction and will always leave these type of judgments open to attack.

In somewhat of a paradox, one could argue that the incidence of less controversial cases such as physical-mental and mental-physical will shrink over time as the more factious mental-mental claims increase. The goal of workers' compensation to fairly treat injured employees is rooted in this society's early industry which was largely "heavy labor." That is, concern over physical injury was paramount during the developmental period of our industrial growth. However, the movement toward a service economy, in recent years, implies the potential for physical injury will be reduced as more workers find employment in white collar jobs. The irony is that a primary risk factor in this modern work environment is exposure to stress. In other words, we should see more, not fewer, mental-mental cases in the future and, thus, unresolved issues related to these rulings will persist.

At one level, the questions hinge on legal interpretation; in other words, the argument is a technical one. This debate over the appropriate method for handling mental-mental claims, however, sidesteps the question of social injustice. The basic inequity under the current conditions is that a worker suffering a genuine stress breakdown may remain uncompensated only because he lives ten miles from another state that would accept his claim.

In sum, it is likely that the issues raised in this paper will remain unresolved for the near future. The incidence of mental-mental claims should persist for some time and give impetus to resolving discrepancies in treatment across jurisdictions. During this process, it will be critical to re-examine the spirit of workers' compensation statutes and establish rulings consistent with these goals.

APPENDIX A

STRESS CLAIMS

I. Not compensable
   - A. Florida
   - B. Georgia
   - C. Kansas
   - D. Minnesota
   - E. Montana
   - F. Ohio
   - G. Oklahoma

II. Compensable
   - A. Traumatic Incident Claims Allowed
     1. Idaho
     2. Illinois
     3. Indiana
     4. Louisiana
     5. Maryland
     6. Mississippi
     7. New Mexico
     8. Tennessee
     9. Texas (limited to traumatic incident claims)
     10. Virginia
   - B. Gradual Stress Claims Permitted
     1. Extraordinary Stress Claims Only
        - a. Arizona
        - b. Arkansas
        - c. Colorado
        - d. Deleware

e. Maine
f. Massachusetts
g. New York
h. Oregon
i. Rhode Island
j. South Carolina
k. Washington
l. Wisconsin
m. Wyoming

2. Ordinary Stress Claims Permitted
a. Alaska
b. California
c. Hawaii
d. Kentucky
e. Michigan
f. New Jersey
g. Pennsylvania
h. West Virginia