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STRATEMEYER v. LINCOLN COUNTY: MENTAL INJURIES AND WORKERS' COMPENSATION POLICY

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I. INTRODUCTION

On May 4, 1990, Sergeant Gary Stratemeyer responded to a suicide call. The victim, a teenage girl, still was alive when he arrived. Stratemeyer forced the bleeding girl from her father's arms and administered cardiopulmonary resuscitation. The girl died later that evening, and thoughts of the incident tormented Stratemeyer that night and continue to do so to this day.[1] Stratemeyer was diagnosed with post-traumatic stress disorder[2] and has been unable to work in gainful employment since shortly after the incident.[3] The Montana Supreme Court denied Stratemeyer workers' compensation benefits when it upheld a statute that denies workers' compensation benefits to claimants with mental injuries unaccompanied by a physical stimulus (mental-mental injuries).[4]

While Stratemeyer's appeal was pending at the Montana Supreme Court, the Montana Legislature added a policy statement to the statute at issue clearly setting forth the legislature's intent that mental-mental injuries not be compensated and expressing the reasons for the exclusion.[5] The unequivocal denial of coverage for mental-mental injuries by the Montana Supreme Court and the Montana Legislature raises questions about the scope and policy of workers' compensation coverage in Montana.

This Note focuses on the Montana Supreme Court's holding in *Stratemeyer v. Lincoln County* and the statutory amendments that have redefined workers' compensation law in Montana. This

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1. Stratemeyer v. Lincoln County, 259 Mont. 147, 149, 855 P.2d 506, 507-08, *cert. denied*, 114 S. Ct. 600 (1993).

2. *Id.* at 157, 855 P.2d at 512.

3. Interview with Sydney McKenna, Stratemeyer's attorney, in Missoula, Mont. (Apr. 28, 1994).

4. *Stratemeyer*, 259 Mont. at 149, 855 P.2d at 507. The term "mental-mental" is used by both the courts and the legislature to describe mental claims that are unaccompanied by a physical injury. Professor Larson characterizes a mental-mental claim as "liability for a mental stimulus producing a mental or nervous result, with no physical component in either the cause or the disabling consequence." 1B ARTHUR LARSON, THE LAW OF WORKMEN'S COMPENSATION § 42.25(c) (perm. ed. rev. vol. 1993); *see also* Gulbraa v. Alco Energy Prods., 225 Mont. 220, 731 P.2d 1302 (1987) (discussing mental-mental claims).

5. 1993 Mont. Laws 2739 (codified at MONT. CODE ANN. § 39-71-105(5) (1993)); *see* text of policy statement *infra* part II.B.

Note begins with a brief discussion of statutory developments in Montana workers' compensation law and discusses the impact of financial concerns on the scope of coverage. The Note then explores the *Stratemeyer* decision and discusses Stratemeyer's petition for certiorari that the United States Supreme Court denied. Next, the Note discusses and analyzes significant constitutional issues raised by the *Stratemeyer* decision. The Note also considers the impact of the *Stratemeyer* decision on the exclusive remedy principle of the Montana Workers' Compensation Act. The Note then compares Montana's definition of injury and the coverage of mental-mental claims with those of other jurisdictions and discusses the argument that all injuries have a physical component. The Note concludes by suggesting a statute that would provide coverage for a narrowly defined class of mental-mental injuries.

II. WORKERS' COMPENSATION IN MONTANA

Workers' compensation legislation held to be constitutional was first enacted in 1915, placing Montana in the middle of the first wave of states to enact workers' compensation acts.[6] The rationale for adopting workers' compensation legislation was to guarantee workers with work-related injuries some form of compensation in exchange for their relinquishing any tort claims against their employers. The legislation was essentially a compromise between industry and labor—workers received guaranteed no-fault recovery, and industry was relieved of the possibility of large and potentially uncapped recoveries in the tort system. The rationale of the workers' compensation system has been summarized as "half a loaf is better than none."[7]

Since the 1915 Act was passed, Montana workers' compensation law has fluctuated between pro-worker and pro-industry legislation.[8] Changes in administration, financial problems with the

6. Workmen's Compensation Act, 1915 Mont. Laws 168; *see* Shea v. North-Butte Mining Co., 55 Mont. 522, 179 P. 499 (1919) (upholding the constitutionality of the Workmen's Compensation Act of 1915). A limited Workmen's Compensation Act was passed in 1909 and declared unconstitutional in 1911 because it did not adequately protect the employer from double payments. Cunningham v. Northwestern Improvement Co., 44 Mont. 180, 222, 119 P. 554, 566 (1911). Currently, the workers' compensation statutes are found at §§ 39-71-101 to -2914 of the Montana Code.

7. *See, e.g.*, Lewis & Clark County v. Industrial Accident Bd., 52 Mont. 6, 8-11, 155 P. 268, 269-70 (1916) (stating that the common law furnished "an uncertain measure of relief" while compensation under Workingmen's Acts is certain and limited).

8. *Compare* 1961 Mont. Laws 471 (broadening the scope of coverage under the Act) *with* 1987 Mont. Laws 1092 (narrowing the scope of coverage and redefining compensable "injury"). For a discussion of the ever-changing definition of injury under the Montana Workers' Compensation Act, see Kraig Kazda, *The Definition of Injury Under the Work-*

State Compensation Insurance Fund (State Fund), and public opinion have set the boundaries for workers' compensation legislation. Since the mid-1980s, the trend has been towards legislation that is more favorable to the employer.[9]

A. *The 1987 Amendment to the Definition of Injury*

In 1987, the Montana Legislature significantly altered the definition of injury.[10] Influenced by public concern, industry, news stories, and editorials foreshadowing the collapse of the workers' compensation system,[11] the legislature narrowed the scope of coverage under the Workers' Compensation Act by changing section 39-71-119 of the Montana Code to state in relevant part:

> (2) An injury is caused by an accident. An accident is:
> (a) an unexpected traumatic incident or unusual strain;
> (b) identifiable by time and place of occurrence;
> (c) identifiable by member or part of the body affected; and
> (d) caused by a specific event on a single day or during a single work shift.
> (3) *"Injury" or "injured" does not mean a physical or mental condition arising from:*
> *(a) emotional or mental stress; or*
> *(b) a non-physical stimulus or activity.*
> (4) "Injury" or "injured" does not include a disease that is not caused by an accident.
> (5) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical harm in relation to other factors contributing to

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ers' Compensation Act: Revisited and Redefined, 49 MONT. L. REV. 341 (1988).

9. In 1987, the legislature repealed section 39-71-104 of the Montana Code, which directed the court to construe the Act liberally, in favor of coverage. 1987 Mont. Laws 1093. That same year, subsection 39-71-105(4) was added, stating that the Act must be construed according to its terms and not liberally. 1987 Mont. Laws 1093.

10. 1987 Mont. Laws 1092, 1095-96.

11. *See, e.g.*, Jim Ludwick, *New Work-Comp Chief Hopes to Rebuild State Program*, BILLINGS GAZETTE, Dec. 12, 1993, at D1 (discussing the new director's policy of cost containment for the troubled program); Jim Ludwick, *Insurance Trouble Shooter Loads Up for Montana*, MISSOULIAN, Dec. 12, 1993, at F1 (virtually same text as the *Billings Gazette* article); Chris Sykes, *A Heavy Toll: What Workers' Comp. Costs and How Montana Rates*, GREAT FALLS TRIB., Feb. 14, 1993, at 4A (discussing the fact that premiums for workers' compensation coverage have increased over 100% since 1987); Charles S. Johnson, *Company President Would Like Challenge of Workers' Comp*, SEATTLE TIMES, Jan. 29, 1993, at C1 (discussing the "deficit-plagued" program, the enormous per-capita deficit, and the "desperate need [for] some kind of a solution"); *Montana Small Business Gets Little Relief in 1987*, BILLINGS BUS. J., July 1987, at 1 (stating that one of the few victories for Montana's businesses during the 1987 legislative session was workers' compensation reform that will cut down costs and abuses and "hold the line" on the $147 million deficit).

the physical harm.[12]

This amendment resulted in the denial of workers' compensation coverage to workers with mental-mental injuries. However, many practitioners continued to believe that mental-mental injuries had not been foreclosed by the 1987 amendment because of the physical nature of all mental injuries.[13] Left unanswered were questions regarding the intent of the legislature in enacting this legislation and the constitutionality of the exclusion.

B. The 1993 Amendment to the Policy Statement

The 1993 Montana Legislature amended the statement of policy in the Workers' Compensation Act while the *Stratemeyer* case was pending at the Montana Supreme Court.[14] The amended policy statement provides:

> It is the intent of the legislature that stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, as is the case with repetitive injury claims, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.[15]

With this amendment, the Montana Legislature expressed its intent that mental-mental injuries not be covered and set forth its rationale for the denial of coverage,[16] thus providing the court in future mental-mental cases direction on what the legislature in-

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12. MONT. CODE ANN. § 39-71-119 (1993) (emphasis added).

13. Interview with David J. Patterson, Professor of Law, University of Montana School of Law, Missoula, Mont. (Apr. 28, 1994); *see infra* notes 117-27 and accompanying text.

14. 1993 Mont. Laws 2739.

15. MONT. CODE ANN. § 39-71-105(5) (1993).

16. One reason for amending the policy statement was mentioned by Senator Harp, who stated that if the definition of injury were to be expanded, the result would be a 27% increase in cost to the State Fund to pay for the additional stress claims that would occur if mental-mental claims were compensated. *Hearings on H.B. 13 Before the Senate Select Comm. on Workers' Compensation*, 53d Mont. Leg., Reg. Sess. (Apr. 6, 1993) [hereinafter *Senate Hearings*] (testimony by Senator Harp).

tended for mental-mental claims.[17] Although the statute is clear on its face, the legislative history provides further insight. For example, testimony given before both the Senate and House Select Committees on Workers' Compensation focused on the increasing deficit in the State Fund, the difficulty in verifying mental claims, the denial of coverage in other jurisdictions, and the administrative problems associated with compensating stress claims.[18] The legislature also considered the potentially substantial increase in claims for mental-mental injuries; however, evidence was presented at the hearings that refuted these distressing predictions.[19] The predictions of large increases in workers' compensation claims presented to the legislature were simultaneously presented to the public through extensive media coverage.[20] The 1993 policy statement was not available to the Montana Supreme Court when it decided *Stratemeyer v. Lincoln County* and determined the constitutionality of a statute excluding recovery for mental-mental injuries.

III. *STRATEMEYER v. LINCOLN COUNTY*

A. Facts

On May 4, 1990, Sergeant Gary Stratemeyer, an eight-year veteran of the Lincoln County Sheriff's Department, responded to a suicide call. En route to the scene, he learned that the young female victim was still alive.[21] At the victim's home, he was led to a bedroom where he found a seventeen-year-old girl who had shot herself in the head. The girl, covered in blood, was being held in her father's arms.[22] Sergeant Stratemeyer forcibly removed the girl from her father and began administering cardiopulmonary resuscitation. He continued administering cardiopulmonary resuscitation until an ambulance arrived. At that time, he carried the victim to a gurney and assisted the ambulance crew in loading her into the

17. *Senate Hearings*, *supra* note 16 (testimony by Senator Towe).

18. *See Hearings on H.B. 13 Before the House Select Comm. on Workers' Compensation*, 53d Mont. Leg., Reg. Sess. (Jan. 6, 1993) [hereinafter *House Hearings*]; *Senate Hearings*, *supra* note 16.

19. *See, e.g.*, *House Hearings*, *supra* note 18 (Jan. 8, 1993) (John Fine, of the Legislative Audit Committee, stated that although the extent of the potential increase in claims in Montana would be unknown, in California stress claims comprise 7% of total claims). However, it should be noted that the California Workers' Compensation Act is the most liberal in coverage of workers with mental injuries. *See* 1B LARSON, *supra* note 4, § 42.25(a).

20. *See, e.g.*, Editorial, *Ten Steps Needed to Cure Workers' Comp*, GREAT FALLS TRIB., Feb. 27, 1993, at 6A; Johnson, *supra* note 11; Editorial, *Stress Could Break Workers' Comp Bank*, GREAT FALLS TRIB., May 19, 1992, at 4A.

21. Respondent's Brief at 1-2, *Stratemeyer* (No. 92-376).

22. *Id.* at 2.

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ambulance for transport to the hospital.[23]

Shortly after escorting the ambulance to the hospital, Sergeant Stratemeyer was dispatched to another accident. Later that evening, Stratemeyer learned that the young girl had died.[24] Upon returning home after work that night, Stratemeyer was plagued by recurring thoughts of the bloodied girl and her father. During the following days, Stratemeyer was obsessed with his decision to tear the victim from her father's arms during her last moments of life.[25] Although Stratemeyer continued to report to work, he began to experience a lack of concentration and mental disorientation.[26] This state of distress continued, and Stratemeyer's co-workers and family noticed changes in both his personality and job performance.[27]

According to Stratemeyer, two specific incidents illustrate the mental anguish he suffered. First, on a family trip about one week after the suicide, Stratemeyer harshly punished his young son.[28] This action was out of character for Stratemeyer, and later, while recalling the incident, he stated that he saw the suicide victim's face superimposed over his son's.[29] Second, within hours after punishing his son, Stratemeyer was the subject of a high-speed pursuit, which was called off when the pursuing officers realized that Stratemeyer was the subject and that he was emotionally unstable.[30] That evening Stratemeyer was admitted to the hospital and given a tranquilizer.[31] He subsequently was diagnosed with post-traumatic stress disorder.[32]

Subsequent treatment did not alleviate Stratemeyer's condition, and other physicians and mental health specialists concurred in the initial diagnosis of post-traumatic stress disorder.[33] Neither the diagnosis nor the extent of Stratemeyer's total disability was disputed by either Lincoln County or its insurer, the Montana Association of Counties Workers' Compensation Trust (MACO).[34]

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23. *Id.*
24. *Id.* at 3.
25. *Id.*
26. *Id.* at 4.
27. *Id.*
28. Stratemeyer v. Montana Ass'n of Counties Workers' Compensation Trust, XIII Mont. Workers' Compensation Ct. Rep. 930, at 6 (1992) [hereinafter *Stratemeyer v. MACO*].
29. *Id.*
30. *Id.*
31. Respondent's Brief at 5-6, *Stratemeyer* (No. 92-376).
32. *Id.* at 7.
33. *Stratemeyer v. MACO*, XIII Mont. Workers' Compensation Ct. Rep. 930, at 7.
34. Stratemeyer v. Lincoln County, 259 Mont. 147, 164, 855 P.2d 506, 517 (Trieweiler, J., dissenting), *cert. denied*, 114 S. Ct. 600 (1993).

Stratemeyer continues to suffer mental anguish and has not returned to his job with the Lincoln County Sheriff's Department.[35]

B. Proceedings

Sergeant Stratemeyer filed a workers' compensation claim on May 25, 1990, which was denied four days later.[36] Stratemeyer then petitioned the Workers' Compensation Court for a hearing regarding his medical expenses and wage loss benefits.[37] The Workers' Compensation Court found that Stratemeyer did not suffer an "injury" as defined in section 39-71-119.[38] However, the Workers' Compensation Court found that subsections 39-71-119(3)(a) and (b), which exclude mental stress from the definition of injury, violate the Equal Protection Clause of the Montana Constitution.[39]

Lincoln County and MACO appealed the Workers' Compensation Court's decision to the Montana Supreme Court. Appellants contended that the plain language of section 39-71-119 clearly excludes mental-mental injuries from workers' compensation coverage.[40] Appellants also asserted that section 39-71-119 was constitutional because the legislature had a rational basis for enacting the statute.[41] In making this argument, appellants asserted that the general rules of constitutional analysis require: "(1) [a] strong presumption of constitutionality; (2) [that] any doubt will be resolved in favor of constitutionality, and every intendment will be made in favor of the statute; and (3) the party attacking constitutionality has a heavy burden to prove the statute invalid."[42] Further, appellants argued that the proper level of scrutiny for the Workers' Compensation Act is the rational basis test.[43] Respondent countered that the Workers' Compensation Court correctly interpreted and applied the law and that the statute was, in fact,

35. McKenna Interview, *supra* note 3.

36. Respondent's Brief at 9, *Stratemeyer* (No. 92-376).

37. *Id.*

38. *Stratemeyer*, 259 Mont. at 149, 855 P.2d at 507.

39. *Id.* at 148-49, 855 P.2d at 507 (citing MONT. CONST. art. II, § 4).

40. Appellants' Brief at 14, *Stratemeyer* (No. 92-376).

41. *Id.* at 11.

42. *Id.* at 10 (citing Harper v. Greely, 234 Mont. 259, 269, 763 P.2d 650, 656 (1988)).

43. *Id.* at 11 (citing Montana Stockgrowers v. Department of Revenue, 238 Mont. 113, 117-18, 777 P.2d 285, 288 (1989)). The rational basis test generally provides that if any rational relationship exists between the legislation and a legitimate government objective, the legislation will be upheld. *See* Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 461-63 (1981) (using the rational basis test and upholding the statute at issue); Condemarin v. University Hosp., 775 P.2d 348, 359 (Utah 1989) (stating that under the rational basis test, the statute will surely be found constitutional).

unconstitutional.[44]

C. *The Majority's Analysis*

Reversing the Workers' Compensation Court, the Montana Supreme Court held that section 39-71-119 does not violate the Equal Protection Clause of the Montana Constitution.[45] The supreme court further found that the Workers' Compensation Court improperly applied the reasoning necessary to decide the Equal Protection question.[46] Justice McDonough, writing for the majority, stated that the Workers' Compensation Court erred in failing to presume the constitutionality of a statute as it may relate to any possible legitimate government interest and in failing to require respondent to meet his burden of proof.[47]

The court began by analyzing the tests that are used to determine the constitutionality of a legislative enactment.[48] The court discussed the rational basis test, stating that if a legitimate state interest can possibly be served by the statute, then the statute will be found to be constitutional.[49] The court also described strict scrutiny analysis and stated that strict scrutiny is to be applied only when the legislation involves a fundamental right or a suspect classification. The court applied the rational basis test, as opposed to strict scrutiny analysis, because the court concluded that the right to receive workers' compensation benefits is not a fundamental right and because the case did not involve a suspect classification.[50]

The Montana Supreme Court stated that in construing legislation of this nature, the purpose of the legislation does not have to appear on the face of the statute or in the legislative history, but instead "may be any possible purpose of which the court can conceive."[51] The court held that the legislative enactment of section 39-71-119 could serve several legitimate state interests, even when looked at in a cursory manner.[52] This interests cited include: improving the financial viability of the system, promoting the financial interests of businesses, and improving the economic conditions

44. Respondent's Brief at 10, *Stratemeyer* (No. 92-376).
45. *Stratemeyer*, 259 Mont. at 154, 855 P.2d at 511.
46. *Id.* at 152, 855 P.2d at 510.
47. *Id.* at 153, 855 P.2d at 510.
48. *Id.* at 150-51, 855 P.2d at 508.
49. *Id.* at 152, 855 P.2d at 509-10.
50. *Id.* at 151, 855 P.2d at 509 (citing Cottrill v. Cottrill Sodding Serv., 229 Mont. 40, 42-43, 744 P.2d 895, 897 (1987)).
51. *Id.* at 152, 855 P.2d at 509-10.
52. *Id.* at 153, 855 P.2d at 510.

of the state.[53] Because the court was able to infer several possible purposes for the statute, it found the statute constitutional.

D. *The Dissenting Opinions*

Justices Trieweiler and Hunt dissented, stating that they would uphold the judgment of the Workers' Compensation Court.[54] Justice Trieweiler's dissent stated that the majority's opinion "sounds the death knell" for the constitutional protection relied on by injured workers.[55] Furthermore, Trieweiler criticized the majority's reliance on and application of the rational basis test.[56]

Trieweiler asserted that the rational basis test has been called no test at all" if the Montana Legislature does not have to offer any reason for its discriminatory classifications.[57] Trieweiler stated that "the only limit on the Legislature's authority to draw arbitrary classifications among its citizens is the creative ability of the majority of the justices on [the] Court."[58]

Trieweiler cited Justice Marshall's dissent in *Massachusetts Board of Retirement v. Murgia* in which Marshall stated that while the United States Supreme Court still speaks in terms of the two-tiered analysis, in reality it uses no such test.[59] Instead, Marshall asserted that the Court uses a balancing test which weighs some of the following concerns: the character of the classification in question, the relative importance of governmental benefits to individuals in the class discriminated against, and the state interest asserted in support of the classification.[60] Trieweiler cited to Marshall's articulation of this sophisticated balancing test to support his view that a test similar to this test should have been used by the majority in *Stratemeyer*.[61]

Trieweiler focused next on Marshall's criticisms of the two-tiered analysis and stated that the main issue in constitutional questions is whether to use the strict scrutiny test, which generally

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53. *Id.* (citing Meech v. Hillhaven West, Inc., 238 Mont. 21, 48, 776 P.2d 488, 504 (1989)).

54. *Id.* at 165-66, 855 P.2d at 518. Justice Hunt's dissent expressed his concern about failing to compensate an injured police officer. Hunt stated that if an injured claimant must present more proof of an injury than that presented by Sergeant Stratemeyer, the state is indeed in "woeful economic straits." *Id.* at 166, 855 P.2d at 518.

55. *Id.* at 156, 855 P.2d at 512.

56. *Id.* at 158, 855 P.2d at 513.

57. *Id.* at 157-58, 855 P.2d at 513.

58. *Id.* at 158, 855 P.2d at 513.

59. *Id.* (citing Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 318 (1976)).

60. *Massachusetts Bd. of Retirement*, 427 U.S. at 318 (Marshall, J., dissenting) (citing Marshall v. United States, 414 U.S. 417, 432-33 (1974)).

61. *See generally Stratemeyer*, 259 Mont. at 159, 855 P.2d at 514.

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results in the statute being struck down, or the rational basis test, which generally results in the statute being upheld.[62] Trieweiler suggested that the Montana Supreme Court is hesitant to use the strict scrutiny test, because application of that test typically leads to finding the statute unconstitutional.[63] Since courts usually are unwilling to declare statutes unconstitutional, preferring to defer to legislatures, strict scrutiny analysis is rarely applied. Rather, Trieweiler asserted, courts drop questions that do not involve fundamental rights into the lower classification to be determined using the rational basis test, even if the test is inappropriate.[64]

Thus, according to Trieweiler, a heightened middle-tier scrutiny should be applied to the Montana Legislature's denial of workers' compensation benefits. Under this test, the state would have the burden of showing that the discriminatory classification is reasonable and that the state interest served is more important than the claimant's interest in benefits. Trieweiler stated that neither party presented any evidence to the court that the state's interest outweighed that of the injured worker.[65] Trieweiler continued by asserting that no evidence as to the purpose of the legislation was introduced at trial and no justification for the discriminatory treatment was presented. Thus, Trieweiler concluded, the majority's speculation that the purpose of the legislation was to save money was inappropriate.[66]

According to Trieweiler, rights and classes exist that, while not classified as "fundamental" and thus subject to strict scrutiny analysis, still need protection from discriminatory legislation because they are essential to a free society.[67] Trieweiler concluded by stating that because the rational basis test nearly always results in the legislation being upheld, these "other" rights and classes are being denied protection.[68]

E. Petition for Certiorari Denied

Sergeant Stratemeyer filed a petition for certiorari to the United States Supreme Court. The Court denied the petition.[69]

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62. *Id.* at 158-59, 855 P.2d at 513-14.

63. *Id.*

64. *Id.* at 159, 855 P.2d at 514.

65. *Id.* at 163, 855 P.2d at 517.

66. *Id.* at 164, 855 P.2d at 517.

67. *Id.* at 159, 855 P.2d at 514 (citing McGowan v. Maryland, 366 U.S. 420, 425 (1961)).

68. *Id.* at 159-62, 855 P.2d at 514-16.

69. 114 S. Ct. 600 (1993). The summary of the Court's refusal to grant certiorari states: "Exclusion under Montana Workers' Compensation Act of mental injuries lacking

Nevertheless, the petition raised several issues that warrant discussion. First, Stratemeyer argued that his constitutional right to equal protection under the law is violated by the Workers' Compensation Act's exclusion of mental-mental injuries.[70] Second, he argued that the Montana Supreme Court did not apply the traditional equal protection analysis when it failed to require the state to show a legitimate government interest for the disparate treatment.[71]

Stratemeyer argued that but for the exclusion of mental-mental injuries, he would be entitled to benefits to pay his medical expenses because he meets all other requirements of the Workers' Compensation Act.[72] Stratemeyer asserted that the 1987 Montana Legislature did not exclude recovery for mental injuries with a physical stimulus, nor did it exclude coverage for physical injuries with a physical stimulus. Rather, Stratemeyer asserted, "[t]he 1987 legislation did not exclude any physical injuries and it did not exclude all mental injuries; only those mental injuries without an accompanying physical component."[73] Further, Stratemeyer stated that the main reason given by the Montana Supreme Court for the disparate treatment was cost savings to Montana employers.[74] According to Stratemeyer, cost savings is never in itself a sufficient reason to discriminate against a particular class.[75] Although the United States Supreme Court declined to hear the case, the inequities raised in the petition could be addressed by the Montana Legislature.

IV. A CONSTITUTIONAL CRITIQUE[76]

A. Application of the Rational Basis Test

The majority's statement of the rational basis test is inaccurate. Traditionally, when using the rational basis test, the question posed is whether a legitimate government objective exists and whether the means used to achieve that objective are rationally re-

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physical component is rationally related to legitimate governmental objective of controlling costs of program and providing benefits and therefore does not violate the Equal Protection Clause of Montana Constitution." 62 U.S.L.W. 3392 (U.S. Dec. 7, 1993) (No. 93-563).

70. Petition for Certiorari at 9, *Stratemeyer* (No. 93-563).

71. *Id.* at 11.

72. *Id.* at 9-10.

73. *Id.* at 10.

74. *Id.* at 15.

75. *Id.* at 16.

76. This analysis draws heavily from an interview with Professor Larry Elison, University of Montana School of Law, Missoula, Mont. (Nov. 18, 1993).

lated to that legitimate state interest.[77] The court in *Stratemeyer* did not use the traditional rational basis test. In *Stratemeyer*, the court states that the question to ask when applying the rational basis test is "does a legitimate governmental objective bear some identifiable rational relationship *to a discriminatory classification.*"[78]

The test, as stated by the Montana Supreme Court in *Stratemeyer*, can result in decisions that are opposite to those that would result from the use of the traditional rational basis test. If one were to apply the *Stratemeyer* rational basis test, many extremely irrational means could be upheld as constitutional. For example, the legislature could reasonably determine that a large proportion of violent crime is committed by unemployed persons. Further, the legislature could reasonably conclude that most violent crimes are committed at night. Thus, adhering to the rational basis test and adopting a "potential solution," the legislature could decide to impose a dawn to dusk curfew on anyone who is unemployed.[79] Such legislation would pass the test as stated in *Stratemeyer* because, although completely irrational, it is related to the government's objective. Thus, the *Stratemeyer* court began its constitutional analysis with an inaccurate statement of the test it chose to apply.[80]

Admittedly, however, even the application of the correct rational basis test usually results in the legislation being upheld.[81] A legitimate objective can be and is almost always found by the courts when economic or social legislation is challenged.[82] Because a legitimate objective is nearly always found, even though the leg-

77. *See, e.g.*, Pennell v. City of San Jose, 485 U.S. 1, 14 (1988); Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 461-63 (1981).

78. *Stratemeyer*, 259 Mont. at 151, 855 P.2d at 509 (emphasis added) (citing Cottrill v. Cottrill Sodding Serv., 229 Mont. 40, 42-43, 744 P.2d 895, 897 (1987)).

79. United States v. Salerno, 481 U.S. 739, 759-60 (1987) (Marshall, J., dissenting).

80. This anomaly is illustrated by the fact that the majority in a subsequent case stated the rational basis test as "whether the classification is rationally related to furthering a legitimate state purpose." Arneson v. Montana Dep't of Admin., ___ Mont. ___, ___, 864 P.2d 1245, 1248 (1993). Further, the majority made no mention of *Stratemeyer* or the rational basis test asserted in that case.

81. Condemarin v. University Hosp., 775 P.2d 348, 359 (Utah 1989) (stating that under the rational basis test, the statute will surely be found constitutional).

82. *See, e.g.*, Schweiker v. Wilson, 450 U.S. 221 (1980) (upholding Social Security Act classification giving reduced Medicaid benefits to persons institutionalized in certain public mental care institutions). *But see* Godfrey v. Montana State Fish & Game Comm'n, 193 Mont. 304, 631 P.2d 1265 (1981) (using the rational basis test yet finding the statute unconstitutional); State v. Jack, 167 Mont. 456, 463, 539 P.2d 726, 730 (1975) (using the rational basis test, yet holding that because the relationship between the statutory classification and its legitimate objective was tenuous and remote, the statute was unconstitutional).

islation may infringe on an interest that the court deems worthy of greater protection, the court has used an intermediate level of scrutiny in some cases.[83]

B. A Retreat from Heightened Scrutiny Analysis?

As Justice Trieweiler's dissent in *Stratemeyer* states, the court in *Butte Community Union v. Lewis* recognized a heightened scrutiny test that can be described as a middle-tier analysis.[84] In *Butte Community Union I*, the contested statute denied general assistance relief to all able-bodied persons under age fifty who did not have dependent children.[85] The Montana Legislature's objective in enacting the statute was the same as its objective in enacting section 39-71-119.[86] Both bills aimed to save the state of Montana money, and in *Butte Community Union I*, the court stated that this objective must be balanced against the interests of "misfortunate people under the age of fifty in receiving financial assistance from the state."[87] In *Stratemeyer*, however, the majority did no such balancing test.

Although Justice Trieweiler briefly discusses *Butte Community Union I*, his treatment does not reveal how supportive the decision appears to be. The constitutional analysis used in *Butte Community Union I* might have bolstered Trieweiler's conclusion that a third level of analysis—heightened scrutiny—is warranted in cases such as *Stratemeyer*.

In *Butte Community Union I*, the court used the heightened scrutiny analysis because welfare benefits and education, while not fundamental rights, are deserving of more than a rational basis analysis.[88] The court held that "because the constitutional convention delegates deemed welfare to be sufficiently important to warrant reference in the Constitution, . . . a classification which abridges welfare benefits is subject to a heightened scrutiny under

83. *See infra* note 92 and accompanying text.

84. *Stratemeyer*, 259 Mont. at 161, 855 P.2d at 515 (discussing Butte Community Union v. Lewis, 219 Mont. 426, 431, 712 P.2d 1309, 1313 (1986) [hereinafter *Butte Community Union I*]); *see also* Butte Community Union v. Lewis, 229 Mont. 212, 745 P.2d 1128 (1987) [hereinafter *Butte Community Union II*]. In *Butte Community Union II*, the Montana Supreme Court applied the test adopted in *Butte Community Union I* striking down an amended version of the same bill which passed during the June 1986 Special Legislative Session. Courts use the terms "middle-tier" and "heightened scrutiny" somewhat interchangeably. This Note uses the term "heightened scrutiny."

85. *Butte Community Union I*, 219 Mont. at 428, 712 P.2d at 1311.

86. *Id.* at 434, 712 P.2d at 1314.

87. *Id.*

88. *Id.* at 434, 712 P.2d at 1313.

an equal protection analysis."[89] In so holding, the court stated that "[a] benefit lodged in our State Constitution is an interest whose abridgement requires something more than a rational relationship to a governmental objective."[90]

Similarly, workers' compensation also is a benefit mentioned in the Montana Constitution.[91] Using the *Butte Community Union I* court's language and analysis, workers' compensation is a benefit whose abridgement requires something more than a rational relationship to a governmental objective. The *Stratemeyer* court focused only on a conceivable rational relationship, even though workers' compensation is mentioned in the Montana Constitution. The court's reliance on the rational basis test in denying workers' compensation benefits to workers with mental-mental injuries is arguably inconsistent with Montana cases recognizing or requiring heightened scrutiny analysis for interests mentioned in the Montana Constitution.[92] Further, the majority makes no attempt to distinguish workers' compensation from other benefits mentioned in the Montana Constitution. Thus, heightened scrutiny analysis was a viable option for the Montana Supreme Court to consider in *Stratemeyer*.

Subsequent to the *Stratemeyer* decision, the court again acknowledged heightened scrutiny analysis in *Arneson v. Montana Department of Administration*.[93] There, the court did not use the heightened scrutiny analysis. Rather, the court found that a stat-

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89. *Id.* at 429-30, 712 P.2d at 1311.

90. *Id.* at 434, 712 P.2d at 1313.

91. MONT. CONST. art. II, § 16. Article II, § 16 provides in pertinent part: "No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state."

92. *See, e.g.*, Arneson v. Montana Dep't of Admin., ___ Mont. ___, 864 P.2d 1245 (1993) (acknowledging heightened scrutiny and favorably citing *Butte Community Union I*); Montana Stockgrowers Ass'n v. Montana Dep't of Revenue, 238 Mont. 113, 777 P.2d 285 (1989) (recognizing middle-tier analysis, yet holding that middle-tier analysis was not applicable to challenge of property tax treatment, but that the rational basis test was proper); *In re* Wood, 236 Mont. 118, 768 P.2d 1370 (1989) (recognizing and adopting a middle-tier analysis for cases that involve rights that, although not fundamental, are lodged in the Montana Constitution); Harper v. Greely, 234 Mont. 259, 763 P.2d 650 (1988) (discussing the provisions of Article XII of the Montana Constitution that provide for economic assistance and social rehabilitative services, and the rights and interests of the people); State *ex rel.* Bartmess v. Board of Trustees, 223 Mont. 269, 726 P.2d 801 (1986) (advocating a middle-tier approach in action regarding extracurricular activities); Deaconess Medical Ctr. of Billings, Inc. v. Department of Social & Rehabilitation Servs., 222 Mont 127, 720 P.2d 1165 (1986) (applying the middle-tier analysis adopted in *Butte Community Union I* to health insurance benefits).

93. *Arneson*, ___ Mont. at ___, 864 P.2d at 1249.

ute that denied benefits to retirees under age fifty-five did not pass the rational basis test.[94] In a specially concurring opinion, Justice Trieweiler "rejoiced" at the majority's re-discovery of rights provided for in the Equal Protection Clause of the Montana Constitution.[95] In addition, he questioned why the majority had not even mentioned *Stratemeyer*, which asserts a different standard under the rational basis test—the application of which conceivably would lead to the opposite result.[96]

Heightened scrutiny analysis, as applied in *Butte Community Union I* and again acknowledged in *Arneson*, is equally applicable to workers' compensation. However, Montana workers' compensation decisions do not mention heightened scrutiny analysis but, rather, use only the rational basis test.[97] Recent workers' compensation cases, while not mental-mental cases, do discuss equal protection and workers' compensation and illustrate how the court has virtually ignored its previous adoption of heightened scrutiny analysis, in somewhat similar contexts, employing instead the rational basis test.[98]

V. Erosion of the Exclusive Remedy Principle

The exclusive remedy principle is perhaps the most firmly entrenched doctrine in workers' compensation law.[99] Montana's ex-

94. *Id.* at ____, 864 P.2d at 1249.

95. *Id.* at ____, 864 P.2d at 1249. Justice Trieweiler asserts that the result in *Arneson* is irreconcilable with the result in *Stratemeyer*, because under *Stratemeyer*, no legislative classification exists that cannot satisfy the "toothless" rational basis test. *Id.* at ____, 864 P.2d at 1249. Trieweiler states that *Stratemeyer* is legally and intellectually inconsistent and *Arneson*, which does not distinguish or overrule *Stratemeyer* and creates a great deal of confusion. Trieweiler further asserts that the confusion is easily dispelled: "Stratemeyer dealt with a classification in the highly political area of workers' compensation law. [*Arneson*] deals with the less politically controversial area of teachers' retirement benefits." *Id.* at ____, 864 P.2d at 1250.

96. *Id.* at ____, 864 P.2d at 1249.

97. *See, e.g.*, Lueck v. United Parcel Serv., 258 Mont. 2, 851 P.2d 1041 (1993) (using the rational basis test and holding that adverse stress reaction to unusual swing shift and long hours leading to disorientation was not an injury requiring employer to provide preference for available comparable position); Harrison v. Chance, 244 Mont. 215, 797 P.2d 200 (1990) (using the rational basis test to uphold the exclusive remedy provision of the Montana Human Rights Act); Eastman v. Atlantic Richfield Co., 237 Mont. 332, 777 P.2d 862 (1989) (holding that workers' compensation is not a fundamental right and that there is a legislative purpose for the differentiation in benefits received through the Workers' Compensation Act and the Occupational Disease Act and calling on the legislature to rectify the disparity under the Acts).

98. *See supra* note 97.

99. *See, e.g.*, Workmen's Compensation Act, 1915 Mont. Laws 168; Shea v. North-Butte Mining Co., 55 Mont. 522, 179 P. 499 (1919) (stating that the Workmen's Compensation Act is exclusive and prohibits an employee from bringing any actions against his employer).

clusive remedy principle is found in section 39-71-411 of the Montana Code and provides that "an employer is not subject to any liability whatever for the death of or personal injury to an employee covered by the Workers' Compensation Act."[100] Montana strictly interprets its exclusive remedy statute, refusing to recognize tort liability for the employer even where the employer is grossly negligent, recognizing tort liability only where the employee demonstrates intentional harm maliciously and specifically directed at the employee.[101] However, in recent years the exclusive remedy principle has come under increasing attack in many jurisdictions.[102] Mental-mental claims are prime targets for attacks against the employers' exclusive remedy defense.[103]

In determining that mental-mental claims are beyond the scope of coverage, the Montana Supreme Court and the legislature, to the potential detriment of employers, may have inadvertently destroyed the exclusivity that was central to the original intent of workers' compensation coverage. If mental-mental injuries, like Stratemeyer's, are outside the scope of coverage of the Act, employers again may be subject to tort liability.[104]

Like Montana, Ohio expressly excludes mental-mental injuries from coverage under its Workers' Compensation Act.[105] In *Day v. NLO, Inc.*, a federal court, interpreting the Ohio Workers' Compensation Act, stated that mental-physical claims and physical-mental claims are not actionable in tort because they are governed by the exclusivity provisions of the workers' compensation law.[106] However, the court found that an employee may sue an employer in tort when a mental stimulus results in a mental injury.[107] While Montana has not ruled on the exclusivity provision with respect to mental-mental injuries, the *Day* case is illustrative of how the Montana court may decide the issue which Stratemeyer is pres-

100. MONT. CODE ANN. § 39-71-411 (1993).

101. Blythe v. Radiometer America, Inc., ___ Mont. ___, ___, 866 P.2d 218, 221 (1993).

102. *See generally* Donald T. DeCarlo, *Handling Your First Workers' Compensation Case—The Exclusive Remedy Doctrine* (PLI Litig. & Admin. Practice Course Handbook Series No. H4-517, 1993).

103. *Id.*

104. *See* Day v. NLO, Inc., 811 F. Supp. 1271, 1279 (S.D. Ohio 1992); Charles S. Johnson, *Disappointment, Relief Greet Decision*, MONTANA STANDARD, June 26, 1993, at 1, 8 (quoting attorney Sydney McKenna stating that: "[T]he employer could now possibly be exposed to civil cases . . . . They will no longer have the exclusive remedy rule."); DeCarlo, *supra* note 102.

105. *Day*, 811 F. Supp. at 1279.

106. *Id.* at 1280.

107. *Id.* (citing Harover v. City of Norwood, 549 N.E.2d 1194 (Ohio Ct. App. 1988).

ently pursuing in state district court.[108] When claimants are allowed to use the tort system for recovery, the relatively low premiums of the workers' compensation system would appear, from the employers' perspective, to be preferable to uncapped jury awards. Conceivably, if the exclusive remedy principle does not hold, after a few large awards, employers would have a vested interest in lobbying the Montana Legislature to include mental-mental injuries within the definition of "injury" in the Workers' Compensation Act.

VI. An Overview of Other Jurisdictions' Treatment of Mental-Mental Claims

State courts and legislatures throughout the country provide a broad range of coverage for mental-mental injuries.[109] Four general categories of mental-mental injuries are discernable.[110] Twenty-nine states currently recognize mental-mental injuries as compensable under their workers' compensation acts.[111] Of the twenty-nine, thirteen require that the stress be unusual—"greater than the stress of everyday life, or sometimes greater than that of ordinary employment."[112] Conversely, eight states, including Montana, have explicitly ruled out recovery of any kind in mental-mental cases.[113]

The most common causes of alleged stress include job pressure and harassment.[114] States that allow compensation have developed different procedures for evaluating and compensating stress

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108. McKenna Interview, *supra* note 3. Stratemeyer's tort claim is filed in the Montana Fourth Judicial District Court, Missoula County, docket No. 77799.

109. 1B Larson, *supra* note 4, § 42.25(a)-(c).

110. Group one: Mental stimulus producing mental injury is compensable even if gradual and even if the stress is not unusual by comparison with that of ordinary life or employment. Group two: "Mental-mental" cases are compensable, even if gradual, but only if the stress is unusual. Group three: "Mental-mental" cases are compensable, but only if the stimulus is sudden. Group four: "Mental-mental" cases are never compensable, whether gradual or sudden; there must be some physical component in the injury. 1B Larson, *supra* note 4, § 42.25(b).

111. 1B Larson, *supra* note 4, § 42.25(c) (Arizona, Arkansas, California, Colorado, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming).

112. 1B Larson, *supra* note 4, § 42.25(f) (Arizona, Arkansas, Colorado, Illinois, Maine, Massachusetts, New York, Oregon, Rhode Island, South Carolina, Washington, Wisconsin, and Wyoming).

113. 1B Larson, *supra* note 4, § 42.25(d) (joining Montana in this position are Florida, Georgia, Kansas, Louisiana, Minnesota, Ohio, and Oklahoma).

114. 1B Larson, *supra* note 4, § 42.25(a).

claims—some states have developed stringent requirements,[115] while others have developed liberal standards.[116] Other courts have held that no injury is purely mental.[117] For example, the Texas Supreme Court, stated that the physical structure of the human body involves an entire interrelated, living, functioning organism.[118] The court reasoned that because the claimant's body no longer functioned properly, he suffered the required physical injury.[119] Similarly, the Georgia Court of Appeals ruled that no injury is purely mental.[120] Rather, an injury is a physical injury no matter what the cause.[121] The court stated:

> The human body consists of bones, flesh, ligaments, and nerves, controlled by the brain. The law does not state which of these particular elements must produce the disability. If a disability exists, whether or not it is psychic or mental, if it is real and is brought on by the accident and injury, this being a humane law and liberally construed, it is nevertheless compensable.[122]

The proposition that all injuries are physical injuries also was supported by the Louisiana Supreme Court when it stated that an individual's mental health is essential to the "operation of the physical structure of his body."[123] The Louisiana court asserted that excluding nervous disorders creates an artificial barrier between other work-related injuries.[124] The court stated that "[h]ow a worker's body reacts to a given situation can result in different types of injuries."[125] Further, the court recognized that "[w]hat may cause one worker to suffer a heart attack (a compensable in-

115. 1B LARSON, *supra* note 4, § 42.23. For example, Colorado requires that stress be shown by competent evidence and that the stress be proximately caused solely by hazards to which the claimant would not have been equally exposed outside of employment. COLO. REV. STAT. ANN. § 8-41-302 (West Supp. 1993).

116. 1B LARSON, *supra* note 4, § 42.25(a). California has the most liberal policy of compensability, allowing recovery even if the stress is gradual and not unusual. 1B LARSON, *supra* note 4, § 42.25(a). California's coverage of mental-mental claims and accompanying problems, such as an increase in benefits paid and administrative expenses, is often referred to by Montana legislators, Montana insurance providers, and the media when opposing coverage of mental-mental injuries. *See generally Senate Hearings*, *supra* note 16.

117. *See, e.g.*, Indemnity Ins. Co. of N. Am. v. Loftis, 120 S.E.2d 655, 656 (Ga. Ct. App. 1961); *In re* Bailey v. American Gen. Ins., 279 S.W.2d 315, 318-22 (Tex. 1955); McAlister v. Medina Elec. Coop., 830 S.W.2d 659, 662-63 (Tex. Ct. App. 1992).

118. *In re Bailey*, 279 S.W.2d at 319.

119. *Id.*

120. *Indemnity Ins. Co.*, 120 S.E.2d at 656.

121. *Id.*

122. *Id.*

123. Sparks v. Tulane Medical Ctr. Hosp. & Clinic, 546 So. 2d 138, 146 (La. 1989).

124. *Id.* at 145.

125. *Id.*

jury) may cause another worker to break down emotionally (a non-compensable injury)."[126] Thus, the argument that a mental injury is necessarily a physical injury finds support in other jurisdictions. Even if Montana continues to hold that mental-mental injuries are not entitled to workers' compensation coverage, using an analysis like that of the Georgia appellate court, an argument can be made that no injury is purely mental and unaccompanied by a physical component.[127]

VII. PROPOSAL

The "physical injury" requirement should be eliminated by statutory amendment. The *Stratemeyer* case demonstrates the injustices that can and will occur if Montana continues to deny relief to workers who are mentally injured by a mental stimulus. In order to provide more equitable benefits to Montana workers as well as to ensure that the Workers' Compensation Act protects employers through the exclusive remedy principle, the Montana Legislature should include "primary mental impairment" in the definition of injury and adopt the following definition of "primary mental impairment" to be used in evaluating coverage for mental-mental injuries:

> Primary mental impairment means a mental illness arising from an accidental injury arising out of or in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event that would elicit significant symptoms of distress in a worker in similar circumstances, but is not an event in connection with disciplinary action, corrective action, job evaluation action, or cessation of the worker's employment.[128]

This statute would limit coverage for mental-mental injuries to a narrow scope, requiring the stimulus to be sudden and rejecting claims and situations with the greatest possibility for abuse.[129] This statute provides a compromise: Workers who are in-

126. *Id.*

127. The interrelationship between physical symptoms and mental injuries has been discussed in Montana. Hagen v. Glacier Memorial Gardens, VIII Mont. Workers' Compensation Ct. Rep. 554, at 8-9 (1987) (finding respiratory problems, weight loss, an increased heart rate, and selective memory problems sufficient physical symptoms to satisfy the physical injury requirements).

128. Adapted from N.M. STAT. ANN. § 52-1-24(B) (Michie 1991). The proposed amendment contemplates repeal of § 39-71-119(3) of the Montana Code.

129. For example, the statute denies coverage for mental injuries related to disciplinary action, firing, or termination. In order for the injury to be covered under the Workers' Compensation Act, the mental stimulus causing the injury must be unusual and capable of

jured by traumatic and stressful events would be covered by the Workers' Compensation Act while employers would be shielded by the exclusive remedy principle from further lawsuits. This compromise would help bring workers' compensation policy back to its original intent—workers giving up their right to recover in tort for work-related injuries in exchange for a guaranteed remedy, with employers not being subject to unlimited awards through the tort system.

VIII. CONCLUSION

Public policy and precedent from other jurisdictions support the right of all workers to recover for mental-mental work-related injuries. In Montana, however, fear of an increased deficit in the State Fund caused concern that the number of claims would increase. The policy of compensating injured workers and shielding employers through the exclusive remedy principle is frustrated when coverage is supported by escalating premiums that may not protect the employers from civil suits. At this point, the underlying policy of the Act is not being met—employees receive no remedy, and employers may not be shielded from tort liability.

Montana legislators, facing political pressure from constituents, are increasingly unwilling to take any stand that might increase the State Fund's deficit or increase workers' compensation premiums.[130] This position, however, may prove detrimental to employers as well. By denying coverage to workers with mental-mental injuries, the legislature may have abrogated the exclusive remedy principle, thus allowing injured employees to sue their employers. Consequently, while the policies expressed by the legislature may accurately reflect the views of their constituents, subjecting workers to the political and economic will of the public is not conducive to the underlying policy of workers' compensation. *Stratemeyer v. Lincoln County* demonstrates the Montana Workers' Compensation Act's failure to achieve the policy goals of workers' compensation. If the workers' compensation system does not bear the cost of defined mental-mental injuries,[131] the burden will fall on individual workers, public welfare systems, or employers if the exclusive remedy principle fails. This scenario seems inconsistent with the original intent of the Workers' Compensation Act.

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causing similar distress in a "reasonable" worker.

130. *See Senate Hearings*, *supra* note 16 (testimony by Senator Harp that the public was seeing a workers' compensation program that was not working and was asking for accountability).

131. *See supra* note 128-29 and accompanying text.

Rather, Montana workers deserve the protections and rights mandated by the Montana Constitution and enjoyed by workers in the majority of states.