

# INDECISIVENESS IN COMPENSATING POST TRAUMATIC STRESS DISORDER: WHERE DOES ILLINOIS LEAVE FIRST RESPONDERS?

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## I. INTRODUCTION

When an employee is injured in the course of employment, there is a potential for great loss, not only for the individual, but for his or her entire family as well. Workers' compensation statutes came about all across the country in order to prevent the undue hardships of litigation an injured worker might face in seeking compensation from his employer. Prior to the enactment of workers' compensation statutes, employees who were injured on the job had to take legal action under the common law principles of tort in order to be compensated by their employer. This proved to be both difficult and burdensome for the average employee. Thus, workers' compensation statutes were designed to bring a quick remedy to workers injured in the course of their employment. In Illinois, the Workers' Occupational Diseases Act, which complements the Workers' Compensation Act, provides an alternative system of liability for workers to ensure prompt and definite compensation for injuries and death suffered in the course of employment.<sup>1</sup>

While the Workers' Compensation Act compensates an employee suffering from an accidental injury arising out of, or in the course of employment,<sup>2</sup> the Workers' Occupational Diseases Act compensates an employee who suffers "a disease arising out of and in the course of the employment or which has become aggravated and rendered disabling as a result of the exposure of the employment."<sup>3</sup> Therefore, it would appear that workers who suffer an injury as a result of their employment are certain to recover under either one of those Acts if they have a legitimate claim.

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1. Gen. Am. Life Ins. v. Indus. Comm'n, 454 N.E.2d 643, 648 (Ill. 1983).
2. 820 ILL. COMP. STAT. 305/1 (2008) (The Workers' Compensation Act affords recovery to a worker that suffers an injury from an accident that is traceable to a definite place and time).
3. 820 ILL. COMP. STAT. 310/1(d) (2008) (The Workers' Occupational Diseases Act allows recovery to a worker whose injury is caused gradually by exposure to something in the work environment).

Essentially, the legislature has developed an improved system to protect workers and their families who are injured as a result of their employment. The situation becomes complicated however, when an employee attempts to recover for psychological injuries resulting from his or her employment.

Imagine a situation where two police officers attempt to recover under the Workers' Compensation Act and the Workers' Occupational Diseases Act, respectively. The first police officer chases a murder suspect, who is allegedly armed and dangerous.<sup>4</sup> The suspect stops running and begins firing at the police officer. The police officer takes cover and begins to return fire at the suspect. Soon thereafter, the suspect stops shooting and the officer approaches only to find the suspect has been fatally shot. The police officer believes that he has killed the suspect, but actually the suspect took his own life. Afterwards, the same police officer begins to have trouble sleeping because of anxiety and intrusive thoughts as a result of the traumatic event. This crippling anxiety eventually begins to permeate into the officer's daily life, leaving him nervous and unable to cope with stressful situations that arise on a daily basis. The police officer is unable to perform his work duties because of the shock of that single event.

The second police officer is a crime scene investigator, who normally analyzes crime scenes involving brutal murders. Over the span of ten years, the investigator has witnessed hundreds of gruesome situations where women and children have been heinously tortured and murdered. At first, the situations did not bother him because he assumed these horrific scenes were part of the job. Nevertheless, the investigator begins having panic attacks throughout his workday where he imagines his wife and daughter are atrociously killed. These debilitating panic attacks leave the investigator unable to perform his job and he refuses to respond to any calls to investigate murder scenes. He is rendered unable to complete his daily job duties because of the gradual impact of years of dealing with the horrors of crime scenes.

In both situations, it seems apparent that the comprehensive recovery scheme set out in both the Workers' Compensation Act and the Workers' Occupational Diseases Act would provide a remedy to the police officers. In the spirit and purpose of workers' compensation law, compensation should be available under one or the other of these Acts. Yet, current Illinois case law and decisions by the Illinois Workers' Compensation Commission indicate otherwise. The officer involved in the shootout where the suspect was killed would have a chance of recovery, but his success would be anything but certain. The crime scene investigator, who developed problems over a period

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4. The facts of this scenario are based on *Ushman v. City of Springfield*, 05 IL.W.C. 08480, No. 08 I.W.C.C. 0234 (Ill. Workers' Comp. Comm'n 2008).

of time from the cumulative effect of horrendous crimes, would almost certainly be barred from recovery. Both claimants, however, would face the potential of being denied recovery due to the fact that the traumatic events they encountered were common to the conditions of employment of first responders.

This article will expose the gaping hole in the Illinois workers' compensation system for recovery by first responders and workers in similar vocations. Section II of this Comment will explain the history of recovery for psychological injuries within the realm of workers' compensation, including recent decisions relating to this issue and their potential impact going forward. Section III will review how other jurisdictions approach the matter, in order to examine the potential downfalls found both in Illinois' compensation system and the other jurisdictions' approaches. As a result, Section IV will propose a workable solution that harmonizes concerns raised throughout this comment by ensuring those who deserve compensation receive it, while protecting employers from fraudulent abuses. This article concludes that, in Illinois, first responders can be categorically excluded from receiving workers' compensation benefits for mental disabilities arising from their job duties.

## II. BACKGROUND

Illinois courts have come a long way in recognizing psychological injuries as being compensable under workers' compensation systems. It could be said that the Illinois courts were ahead of the national curve in this respect. For this reason, it is surprising that Illinois would appear to be neglectful towards its first responders. The landmark case of *Pathfinder* opened the door for employees to recover for mental injuries arising from an event that did not result in physical injury to the claimant.<sup>5</sup> Over the years, the scope of recovery has been whittled away by the courts through widely followed precedents established in *General Motors*<sup>6</sup> and *Chicago Board of Education*.<sup>7</sup> The fallout from these cases has led to a gap in the compensation system that excludes first responders and employees in similar vocations from compensation for their psychological injuries.

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5. *Pathfinder Co. v. Indus. Comm'n*, 343 N.E.2d 913 (Ill. 1976). (Prior to this case, Illinois courts had only allowed recovery for psychological or emotional injuries that arose from an accident where the claimant suffered a physical injury as well).

6. *Gen. Motors Parts Div. v. Indus. Comm'n*, 522 N.E.2d 1260 (Ill. App. Ct. 1988).

7. *Chi. Bd. of Educ. v. Indus. Comm'n of Ill.*, 523 N.E.2d 912 (Ill. App. Ct. 1988).

### A. Post Traumatic Stress Disorder as a Cognizable Injury

While post traumatic stress disorder (PTSD) has been around for centuries, it was brought to the forefront of the medical field by Vietnam veterans suffering from the emotional effects of the conflict and their advocates.<sup>8</sup> PTSD was officially recognized as a mental disorder by the American Psychiatric Association in 1980.<sup>9</sup> In fact, a study involving 715 pairs of twins found that the twin who had served in Vietnam and experienced heavy combat was nine times more likely to suffer from PTSD than the twin who had not been in the military.<sup>10</sup> From the outset, there has been criticism of the methods used to evaluate PTSD and speculation that a substantial rise in fraudulent claims would occur.<sup>11</sup>

Since 1980, PTSD has become more widely accepted as a social phenomenon and the number of individuals diagnosed with it has risen exponentially.<sup>12</sup> PTSD has become more prevalent in our society in recent years due to the number of war veterans returning from Iraq who suffer from PTSD symptoms.<sup>13</sup> In fact, some researchers explain that officers who experience cumulative traumatic events are highly susceptible to developing PTSD over time.<sup>14</sup>

### B. Setting the Stage with *Pathfinder*

In Illinois, the precedent for providing workers' compensation recovery for an individual who suffered only mental injuries in the absence of physical injuries arose from the *Pathfinder* decision. The *Pathfinder* court was forced

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8. JUDITH HERMAN, *TRAUMA AND RECOVERY* 28 (Basic Books 1997).

9. *Id.*

10. GEORGE CHAMBERLIN, *PSYCHIATRIC CLAIMS IN WORKERS' COMPENSATION AND CIVIL LITIGATION* 47 (Cumulative Supp. 2002).

11. The American Psychiatric Association, in its publication *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR)*, provides criteria for Posttraumatic Stress Disorder at Section 309.81. A PTSD diagnosis requires (1) that a person experience an event or *events* that involved actual threatened injury or death, (2) the person's response is helplessness and fear, and (3) the event is re-experienced by the individual through their emotions or reactions to similar stimuli. AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 463 (4th ed. 2000).

12. MATTHEW FRIEDMAN, *WHAT IS PTSD?* 6 available at <http://www.ncptsd.va.gov/ptsd101/>, stating that in the average U.S. population about seven percent of women and four percent of men suffer from PTSD (last visited Feb. 7, 2009).

13. *Id.* at 6, stating that about 12 to 20 percent of returning Iraq veterans suffer from PTSD.

14. P. Mann & John Neece, *Workers' Compensation for Law Enforcement Related Post Traumatic Stress Disorder*, 8 *BEHAV. SCI. & L.* 447, 447-48 (1990).

to decide “whether an employee who suffers a sudden, severe emotional shock, traceable to a definite time and place and to a readily perceivable cause, which produces psychological disability, can recover under the Workmen’s Compensation Act though the employee suffered no physical injury.”<sup>15</sup>

The facts of *Pathfinder* indicated the claimant instructed a coworker how to operate a machine press when, shortly thereafter, that same coworker severed her hand in the press.<sup>16</sup> At the time of the incident, “the claimant pulled the severed hand from the machine and fainted at the sight of it.”<sup>17</sup> She was taken to the hospital and remained there overnight after suffering an anxiety reaction.<sup>18</sup> The claimant experienced a myriad of symptoms, including headaches, numbness in her hands and feet, and nervousness.<sup>19</sup> She eventually quit her job due to her psychological injuries, and she spent time in the hospital for her illness, with her treating physician concluding that she suffered from residual anxiety.<sup>20</sup> Additionally, her physician stated that the accident to which the claimant had been exposed “had a tremendous impact on her consciousness and that the memory is still there.”<sup>21</sup>

Initially, the Industrial Commission held that the claimant had established her claim and should be compensated, but on appeal, the circuit court reversed the Commission’s decision, stating that it was contrary to the manifest weight of the evidence.<sup>22</sup> On appeal, the Supreme Court of Illinois began its examination of the issue by stating that its common law holdings in tort law were not controlling on workers’ compensation decisions because the act was remedial in nature and was intended to provide protection for the injured worker.<sup>23</sup> Because the statute is to be liberally construed and the term “accident” was interpreted to encompass anything that is unforeseen, the court decided that an employee could recover for an accident that caused severe emotional shock, even though no physical injury was sustained.<sup>24</sup>

Deciding the issues as matters of first impression, the court analogized the case at bar to previous decisions where it had allowed recovery when the claimants had psychological disabilities resulting from accidents that caused

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15. *Pathfinder Co. v. Indus. Comm’n*, 343 N.E.2d 913, 916 (Ill. 1976).

16. *Id.* at 914-15.

17. *Id.* at 915.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* at 914.

23. *Id.* at 916.

24. *Id.* at 917.

merely superficial physical injuries.<sup>25</sup> The court reasoned that it would be illogical to allow compensation for psychological injuries accompanied by a minor physical injury, only to deny an award to a claimant with similar psychological injuries brought on by a sudden, severe emotional shock, where the minor or superficial physical injury is absent.<sup>26</sup> The court supported its conclusion by citing a growing trend to allow compensation for psychological injuries in other jurisdictions.<sup>27</sup>

The *Pathfinder* court dismissed fears that this decision would open the floodgates of litigation for fraudulent claims from malingering employees.<sup>28</sup> It reasoned that other forward-thinking jurisdictions had not suffered this fate, and instructed the Commission and courts to remain vigilant in their approach to claims “which might be easily fabricated or exaggerated,” in order to dispel the former contention.<sup>29</sup> The decision reached could be seen as foreshadowing the developments that lay ahead in the evolution of awarding compensation to workers for claims resulting from PTSD. The progeny of *Pathfinder* had the arduous task of anticipating how the Supreme Court of Illinois would handle a brand new realm of potential recovery for injured workers.

### C. Interpretations of *Pathfinder*

The decision in *Pathfinder* left behind a concise test that stood virtually untouched for nearly a decade. The *Pathfinder* test stated that if an employee “[1] suffers a sudden, severe emotional shock [2] traceable to a definite time, place and cause [3] which causes psychological injury or harm . . .” the employee is covered under workers’ compensation, even though there is no physical injury.<sup>30</sup> The proverbial landscape changed, however, in 1988. The year brought two major decisions that seriously restricted the potential for recovery for PTSD claims under the Illinois Workers’ Compensation Act and the Workers’ Occupational Diseases Act.

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25. *Id.* at 917 (examining the holdings of *Marshall Field & Co. v. Indus. Comm’n*, 137 N.E. 121 (Ill. 1922) and *Olin Indus., Inc. v. Indus. Comm’n*, 68 N.E.2d 259 (Ill. 1946), as well as other decisions that resulted in similar dispositions).

26. *Id.*

27. *Id.* at 918.

28. *Id.* at 919.

29. *Id.*

30. *Id.* at 917.

*1. The General Motors Decision Adds Evidentiary Hurdles to the Pathfinder Test*

*General Motors* added requirements to the *Pathfinder* test for the purposes of the Workers' Compensation Act.<sup>31</sup> *General Motors* involved a claimant who applied for benefits after he suffered a psychological injury when "his supervisor verbally assaulted him with profane, racial slurs."<sup>32</sup> The claimant stated that, because of the way he had been assaulted, he felt like he was less than a man.<sup>33</sup> This led to the claimant's incessant drinking, and eventually to his inability to return to work.<sup>34</sup> More than one year after the incident, the claimant sought psychiatric help and was diagnosed with, and treated, for depression and self-esteem issues.<sup>35</sup> An important evidentiary note was that a psychiatrist chosen by the Commission testified the claimant's prior military experience, which included heavy combat in World War II, indicated the claimant could withstand the emotional strains and confrontations of everyday life.<sup>36</sup>

Initially, the claimant was denied benefits by the arbitrator, who found that the claimant had failed to prove that he had sustained a compensable accidental injury.<sup>37</sup> Upon review, the Commission reversed the arbitrator's decision, awarding benefits to the claimant, and the circuit court affirmed the Commission's decision.<sup>38</sup> Relying almost solely on the language of *Pathfinder*, the Court of Appeals examined the claimant's arguments and the Commission's findings.<sup>39</sup> The court applied the facts to the test outlined in *Pathfinder* and found that the claimant's evidence established that the psychological breakdown occurred as a gradual deterioration of his mental stability caused by a series of factors, not by a single work related event.<sup>40</sup> Essentially, the court held that the claimant's injury did not precipitate an immediately apparent reaction to the emotional stimulus, and therefore was not compensable.<sup>41</sup>

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31. Gen. Motors Parts Div. v. Indus. Comm'n, 522 N.E.2d 1260 (Ill. App. Ct. 1988).

32. *Id.* at 1260.

33. *Id.* at 1261.

34. *Id.*

35. *Id.* at 1261-64.

36. *Id.* at 1263.

37. *Id.* at 1264.

38. *Id.* at 1265.

39. *Id.* at 1265-66.

40. *Id.*

41. *Id.*

Furthermore, *General Motors* created additional requirements to be met by workers seeking compensation under the *Pathfinder* test.<sup>42</sup> The actual test, however, is somewhat ambiguous because the court phrased it in two different ways. First, *General Motors* narrowed the scope of *Pathfinder* to hold that compensation is to be awarded when “an employee suffers a sudden, severe emotional shock which results in immediately apparent psychic injury and is precipitated by an uncommon event of significantly greater proportion or dimension than that to which the employee would otherwise be subjected in the normal course of employment.”<sup>43</sup> Then, the court refined its language to state “*Pathfinder* authorizes an award of benefits only when an employee suffers a sudden severe emotional shock which produces immediate disability and is caused by an uncommon non-traumatic work-related experience out of proportion to the incidents of normal employment.”<sup>44</sup>

The two main elements that the court prescribed were (1) an immediate reaction and (2) an event greater than would occur in the normal course of employment.<sup>45</sup> The immediate reaction requirement is consistent with an accidental injury, as opposed to an occupational disease that occurs over a period of time. The event being beyond normal employment however, could mean it was (a) outside the norms of any employment setting, or (b) outside the norms of the particular class of employment in which the claimant falls. The latter interpretation is discussed below.

## 2. *The Chicago Board of Education Decision Further Clouds the Pathfinder Test*

A major decision in the field of employment-related PTSD claims under the Occupational Diseases Act came in *Chicago Board of Education*.<sup>46</sup> Reaching its holding only weeks after *General Motors*, the *Chicago Board of Education* court made a similar finding. In *Chicago Board of Education*, an elementary school teacher sought compensation for a mental injury under the Workers’ Occupational Diseases Act.<sup>47</sup> Here, the claimant had endured a series of traumatic events while in the employ of the school and he provided a date of incident for each event.<sup>48</sup> These incidents ranged from being robbed to being subjected to generally poor working conditions over a timeframe of

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42. *Id.* at 1266.

43. *Id.*

44. *Id.* at 1267.

45. *Id.* at 1266.

46. *Chi. Bd. of Educ. v. Indus. Comm’n*, 523 N.E.2d 912 (Ill. App. Ct. 1988).

47. *Id.* at 913.

48. *Id.* at 913-14.

four years, all of the incidents having occurred on school grounds.<sup>49</sup> The claimant alleged that he suffered from a psychological debilitation due to “the gradual deterioration of claimant’s work environment, chaos in the classroom, lack of support from the administration, physical assault by students, inability to control the classroom, and physical isolation in a mobile classroom detached from the main school facility.”<sup>50</sup> The teacher sought treatment for his mental illness and did not return to teaching after the spring of 1978.<sup>51</sup>

The arbitrator granted the claimant compensation under the Occupational Diseases Act and the Commission affirmed the decision.<sup>52</sup> On *certiorari*, the order issued by the Commission was affirmed by the circuit court.<sup>53</sup> The appellate court took up the issue of “whether on-the-job mental stress which results in emotional illness in the absence of physical trauma and sudden disablement traceable to a definite time, place, or cause is compensable under the Occupational Diseases Act.”<sup>54</sup> With *Pathfinder* in mind, the court found that, due to the potential for abuse by employees making fraudulent claims, recovery could not be allowed for psychological injuries which gradually come to fruition over time within the normal course of employment.<sup>55</sup> Through this reasoning, a new test was created for the purpose of determining under what circumstances the Occupational Diseases Act allows recovery for mental disorders arising from employment.<sup>56</sup>

Therefore, the applicable test was set forth as follows: mental disorders which are a result of the gradual deterioration of mental processes are compensable only when (1) the disorder arose from a situation greater than the day to day emotional stress all employees endure, (2) the conditions existed from an objective standpoint, not merely in the eyes of the injured employee, and (3) the employment conditions were greater cause to the disorder than non-employment conditions.<sup>57</sup> Applying this test to the facts at hand, it was decided that the claimant could not recover, in part, because “the conditions allegedly producing the injury [were] no greater than those any teacher might face in an educational setting.”<sup>58</sup> Thus, the Commission determined the claimant had failed the first prong of the test which required that the stressors

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49. *Id.*

50. *Id.* at 913.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* at 916.

55. *Id.* at 917.

56. *Id.* at 917-18.

57. *Id.* at 918.

58. *Id.*

he faced be greater than stressors found by other employees in the same class of employment.<sup>59</sup> Consequently, the potential for two different test interpretations, as seen in *General Motors*, was apparent here because “all employees” in the first prong of the test could mean either (1) all employees in general, including all types of employment or, (2) employees within a particular class or field of employment.

According to a leading commenter, Arthur Larson, there are four primary approaches to determining compensability for mental/mental<sup>60</sup> claims.<sup>61</sup> For mental/mental claims, states allow either (1) no compensation under any circumstance, (2) compensation if the disability results from a sudden, frightening or shocking incident, (3) compensation for gradual onset of mental disability that is brought on by events that are not unusual to the workplace, or (4) compensation for gradual onset of mental disability that is caused by events that are extraordinary to the workplace.<sup>62</sup> The decision reached in *Pathfinder* put Illinois into category two under Larson’s rubric.<sup>63</sup> This approach, however, limited compensation to injuries caused by a singular accident under the Workers’ Compensation Act, and barred recovery under the Occupational Diseases Act.

Consequently, Illinois courts saw fit to modify the precedent from *Pathfinder*. The new Illinois workers’ compensation scheme is best categorized under Larson’s fourth category.<sup>64</sup> *General Motors* bridged two categories of Larson’s scheme by taking the sudden traumatic accident element from category two and linking it to the extraordinary or unusual element from category four.<sup>65</sup> Additionally, *Chicago Board of Education* took compensation for mental/mental claims as occupational diseases completely out of the second Larson category and placed it wholly into category four.<sup>66</sup> Illinois courts, in a sense, have departed from the ruling in *Pathfinder*, creating a muddled affair that leaves claimants and employers guessing at the evidentiary standard they might face.

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59. *Id.* at 918-19.

60. The mental/mental theory is that in an event that is not precipitated by a physical injury, recovery is based upon *mental* stimuli causing a *mental* injury.

61. ARTHUR LARSON, WORKERS’ COMPENSATION § 42.25(b)-(g) (1996) [Arthur Larson was a foremost authority on workers’ compensation who authored multiple treatises on the subject, published by Matthew Bender (now part of Lexis Publishing) Larson’s work has been carried on, under his name, by his son, Lex Larson].

62. *Id.*

63. See *Pathfinder Co. v. Indus. Comm’n*, 343 N.E.2d 913 (Ill. 1976).

64. See Larson, *supra* note 61, at 12.

65. See *Gen. Motors Div. v. Indus. Comm’n*, 522 N.E.2d 1260 (Ill. App. Ct. 1988).

66. See *Chi. Bd. of Educ. v. Indus. Comm’n of Ill.*, 523 N.E.2d 912 (Ill. App. Ct. 1988).

#### D. The Current State of the Law

As a result of the tests promulgated by the courts in *General Motors* and *Chicago Board of Education*, serious implications surfaced, especially for claimants who were in an employment field which required them to deal with severe emotional stressors on a regular basis. Essentially, the higher evidentiary thresholds created by the aforementioned cases made it extremely difficult for a first responder to recover for mental injuries arising from his or her employment. This section will examine recent decisions that reveal the potential for individuals to be left without remedy for their mental or psychological injuries caused by the stressful nature of their employment.

##### 1. A Trend of Denying Compensation

The decision by the Illinois Workers' Compensation Commission in *Ushman v. City of Springfield* represented a situation that exposes the confusion in following the tests propounded by the courts in *General Motors* and *Chicago Board of Education*. In *Ushman*, the claimant was a police officer who, while on duty, was in pursuit of an armed murder suspect.<sup>67</sup> The police officer fired three shots at the suspect, and the suspect later died due to a self-inflicted gunshot wound.<sup>68</sup> The claimant was under the mistaken impression, however, that he had shot and killed the suspect.<sup>69</sup> While the claimant felt fine for several days, this incident had a great impact on him, as he was later plagued by sleeplessness and increased anxiety.<sup>70</sup> In deciding the Workers' Compensation claim, the arbitrator<sup>71</sup> made an evidentiary finding that the claimant had extensive training with weapons and situations where there was an armed suspect, and the claimant had experienced situations of violence and death during his career as a police officer.<sup>72</sup> Accordingly, the arbitrator began by applying the *Pathfinder* test to decide if the claimant had

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67. *Ushman v. City of Springfield*, 05 IL.W.C. 08480, No. 08 I.W.C.C. 0234 (Ill. Workers' Comp. Comm'n 2008).

68. *Id.*

69. *Id.*

70. *Id.*

71. Workers' Compensation suits begin at an administrative level, with an arbitrator making an initial finding. A party who is not satisfied with the arbitrator's finding may appeal to the Illinois Workers' Compensation Commission for an administrative review of the arbitrator's finding. After this, a party who is not satisfied may appeal to the circuit court in their jurisdiction, beginning the formal court process. 820 ILL. COMP. STAT. 305/1 et. seq. (2008).

72. *Ushman*, No. 08 I.W.C.C. 0234.

sustained a compensable injury under the mental/mental theory.<sup>73</sup> The claimant met the requirement of *Pathfinder* because his psychological injuries were caused by “a sudden, severe emotional shock traceable to a definite time, place and cause.”<sup>74</sup> The arbitrator, however, held that *General Motors* had limited *Pathfinder* to instances where the injury was immediately apparent and of a greater proportion than that to which the employee would be subjected in the normal course of employment.<sup>75</sup> Thus, the arbitrator concluded that because the claimant had felt normal for a period of less than two weeks and the event was not an uncommon event for a police officer, he could not be compensated under the Workers’ Compensation Act.<sup>76</sup> The claimant subsequently appealed and the Illinois Workers’ Compensation Commission affirmed the arbitrator’s findings.<sup>77</sup>

A similar issue appeared in *Burney v. Jersey Community Hospital*.<sup>78</sup> There, the claimant was an Emergency Medical Technician who had suffered from PTSD after an incident where a man died because of mechanical problems in the ambulance that should have been fixed prior to departure.<sup>79</sup> The Commission found it significant that the claimant did not seek treatment for over three months.<sup>80</sup> Because of this delay, the arbitrator opined that the claimant did not suffer a sudden severe emotional shock, further stating that “[s]he had been a paramedic for fourteen years and had patients die in transit on multiple occasions.”<sup>81</sup> Once again, this case illustrates the trend in Illinois to refuse recovery for traumatic events that are inherently a part of the job for first responders.

Notably, firefighters have also been excluded from recovery for mental injuries. In *Perry v. City of Peoria*, a firefighter feared for his life after he was trapped on the second floor of a residence because of a flashover, a sudden explosive ignition of fire, on the first floor.<sup>82</sup> The workers’ compensation arbitrator noted that entering a burning building is what firemen do and such risks are to be expected by firemen.<sup>83</sup> The arbitrator stated that the danger of the flashover is not greater than the danger to which all firefighters are

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73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Burney v. Jersey Cmty. Hosp.*, 04 IL.W.C. 41965, No. 06 I.W.C.C. 1168 (Ill. Workers’ Comp. Comm’n 2006).

79. *Id.*

80. *Id.*

81. *Id.*

82. *Perry v. City of Peoria*, 01 I.I.C 0791, No. 98 IL.W.C. 28990 (Ill. Indus. Comm’n 2001).

83. *Id.*

exposed.<sup>84</sup> This holding appears to bar compensation for all dangerous fields of employment because the claim is based on exposure to the kinds of risks that the employees are subjected to on a regular basis.

## 2. *The Same Class of Employment Test is used in Occupational Disease Cases*

Logically, first responders are unlikely to be awarded compensation for the gradual onset of PTSD under the Workers' Occupational Diseases Act. For instance, in *Turrentine v. Springfield Park District*, a police officer was denied recovery when he made a questionable choice not to use force to subdue a suspect and the suspect subsequently stabbed himself in the presence of the police officer.<sup>85</sup> This incident led to the deterioration of the officer's employment relationship with his supervisor, and eventually to the officer's resignation.<sup>86</sup> The arbitrator held that, because of the claimant's delay in seeking treatment for his psychological injuries and lost time from work, the claimant should be denied benefits.<sup>87</sup>

In an example of a categorical denial, a teacher's psychological injuries were found to be non-compensable in *Board of Education of the City of Chicago v. Industrial Commission*.<sup>88</sup> This holding was significant because it involved a claimant being denied recovery because the causes of his mental injury were compared to those causes faced by individuals in the same field of employment, rather than the entire workforce in general. Originally, the Industrial Commission had allowed compensation under the Occupational Diseases Act.<sup>89</sup> After twenty-two years of teaching, the claimant became increasingly depressed and frustrated with his employment because of the number of disciplinary issues he was having with his students.<sup>90</sup> The "straw that broke the camel's back" occurred when a girl slapped the claimant in the face in front of other students in the lunch room, which catapulted the claimant into an acute suicidal depression.<sup>91</sup> The slap was the tipping point of a gradual onset of depression because of its humiliating consequences, and the claimant did not return to work thereafter.<sup>92</sup>

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84. *Id.*

85. *Turrentine v. Springfield Park Dist.*, 99 I.I.C. 0847, No. 97 IL.W.C. 61559 (Ill. Indus. Comm'n 1999).

86. *Id.*

87. *Id.*

88. *Bd. of Educ. of the City of Chi. v. Indus. Comm'n*, 538 N.E.2d 830 (Ill. App. Ct. 1989).

89. *Id.* at 831.

90. *Id.*

91. *Id.*

92. *Id.*

While distinguishing the facts from those in *Pathfinder*, the court stated that this claimant had developed emotional depression over the course of twelve to sixteen months and the slapping incident “was a risk connected with claimant’s employment that could or might occur in the ordinary course of events to a person engaged as a school teacher.”<sup>93</sup> Citing fear of opening the floodgates of litigation, the court found that because this event was not an extraordinary event that arose from a stressful situation of greater dimensions than “the experience encountered by teachers in the Chicago school system,” the claimant could not be awarded compensation.<sup>94</sup> Thus, this decision makes it clear that if a teacher could not recover for events which might reasonably be experienced by other teachers, a police officer, fireman, or emergency medical technician could not recover for psychological disabilities arising from gruesome incidents that other first responders can expect to see while on the job.

Perhaps the best example of the Workers’ Occupational Diseases Act denying an individual exposed to trauma any benefits is *Schlosser v. State of Illinois Department of Children and Family Services*.<sup>95</sup> In *Schlosser*, the claimant had worked as an investigator for the Department of Children and Family Services (DCFS).<sup>96</sup> The claimant had worked for DCFS for seventeen years and was a death investigation specialist due to his prior experience as a police officer.<sup>97</sup> During his tenure, he was placed on cases involving children as victims in crimes of homicide, fatality, and molestation.<sup>98</sup> On one particular occasion, the claimant was involved in a case where a mother had drowned one of her babies and later attempted to drown another one because the child had begun to look like the first child.<sup>99</sup> The claimant testified at the mother’s criminal hearing and later taught classes on investigation, using her story and pictures of the event as examples.<sup>100</sup>

The case and its details had troubled the claimant.<sup>101</sup> When the mother was set to be released from custody, the claimant learned that she was pregnant again.<sup>102</sup> The claimant was asked to testify for the state at a hearing

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93. *Id.* at 832-33.

94. *Id.* at 833-34.

95. *Schlosser v. State of Ill. Dep’t of Children and Family Serv.*, 00 I.L.C. 0570, No. 98 IL.W.C. 38177 (Ill. Indus. Comm’n 2000).

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

concerning the state taking custody of the newborn child.<sup>103</sup> The claimant stated that he had nightmares and intrusive thoughts after seeing the mother testify while holding her baby the same way she had held her deceased child in a picture the claimant used in his teaching.<sup>104</sup> Thereafter, he was unable to continue working and suffered from debilitating psychological injuries from the years of working with abused children, culminating in the abovementioned case.<sup>105</sup> The Commission denied compensation, stating that the claimant had failed to prove a compensable injury under either accidental/workers' compensation or repetitive trauma/occupational disease theories.<sup>106</sup> The dissent, however, stated:

It is an understatement to observe that the disorder arose "under work conditions of greater dimension than the day to day emotional strain all employees suffer." If intimate and regular exposure over a course of seventeen years to the torture, mutilation, beating, burning, rape and murder of children is not an extraordinary condition of employment of greater dimension than to which most or many employees are exposed, there can be none.<sup>107</sup>

In another school related case, the Commission denied benefits to a school nurse whose excessive workload precipitated an emotional outburst that left her unable to continue working.<sup>108</sup> In that case, the dissent exposed the perils of denying compensation to a class of employees based on the extreme situations they share as a class.<sup>109</sup> Relying on the Illinois Supreme Court's holding in *Baggett v. Industrial Commission*,<sup>110</sup> the dissent stated a claimant should not be required to show that the stressor or traumatic stimulus exceeded the stress of coworkers, but rather should only have to prove that the stimulus or stress was greater than the stress experienced by the general working public.<sup>111</sup> The dissent illustrated the situation that could arise if a first responder was compared to his coworkers for purposes of mental disability compensation. Essentially, a first responder would be denied recovery

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103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.* (It is common for courts and the Commission to distinguish workers' compensation claims from occupational disease claims by applying the terms accidental injury to workers' compensation and repetitive trauma to occupational diseases.)

107. *Id.* (Sherman, J., dissenting).

108. *Edwards v. E. St. Louis Sch. Dist.*, 02 I.I.C. 0435, No. 99 IL.W.C. 16134 (Ill. Indus. Comm'n 2002).

109. *Id.* (Kinnaman, J., dissenting).

110. *Baggett v. Indus. Comm'n*, 775 N.E.2d 908 (Ill. 2002).

111. *Id.*

because, in comparison, his coworkers experience traumatic events on a regular basis. The dissenting Commission judge further opined that to compare claimants to their fellow workers would lead to an entire workforce uniformly experiencing outrageous work conditions but no single worker having a compensable injury because all of the employees of that class were subjected to the same level of stress.<sup>112</sup> Moreover, the dissent stated that there should be no difference between the test for mental/physical and mental/mental claims.<sup>113</sup>

A final example of a case where compensation was denied because the employee was compared to her class of fellow employees was *Johnson v. State of Illinois Department of Human Services*.<sup>114</sup> The claimant was the subject of eight workplace investigations over the course of five years, which caused a disability stemming from stressors related to the aforementioned investigations.<sup>115</sup> In that case, the arbitrator reasoned that the investigations did not cause stress in greater dimensions than State of Illinois' managerial employees must endure, and therefore, denied recovery.<sup>116</sup>

Although not all claims for mental injuries under the Occupational Diseases Act were precluded by *Chicago Board of Education*,<sup>117</sup> one early commenter noted a higher evidentiary threshold for causation that "further limited compensation for the vast majority of stress related mental disorders by proscribing their inclusion under the [Act]."<sup>118</sup> It is unclear whether an employee subjected to numerous traumatic events because of the nature of employment can recover for a mental disability brought about over time, but prior holdings indicate that the employee cannot. Thus, the road to recovery for mental disabilities by a first responder is littered with limitations, and perhaps, blocked altogether. The next section will analyze how the issue is handled in other jurisdictions, in an effort to provide a model for reform of Illinois workers' compensation law.

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112. *Id.*

113. *Id.* (The majority was reluctant to apply Baggett because it involved a situation where negative mental stimuli resulted in a physical ailment).

114. *Johnson v. State of Ill. Dept. of Human Serv.*, 8 I.W.C.C. 0014, No. 04 IL.W.C. 17036 (Ill. Workers' Comp. Comm'n 2008).

115. *Id.*

116. *Id.*

117. *Chi. Bd. of Educ. v. Indus. Comm'n*, 523 N.E.2d 912 (Ill. App. Ct. 1988).

118. Thomas F. Crosby, *Survey of Illinois Law: Workers' Compensation*, 13 S. ILL. U. L.J. 779, 794 (1989).

### III. ANALYSIS

Entire classes of employees are potentially left out in the cold when courts analyze cases using the aforementioned frameworks. The approach of denying recovery because of the nature of employment is reminiscent of the common law doctrine of the “firemen’s rule.”<sup>119</sup> Essentially, when an injured worker seeks recovery, he can be categorically denied compensation for mental disability if the stressors are compared to those experienced by a worker in the same line of work. Either the Illinois Supreme Court or the legislature must provide definitive guidelines to clear up the confusion found in the current case law. The proper frame of comparison is to view the traumatic event or stressors in light of the day to day situations experienced by the general workforce. There is no denying that PTSD is a real problem, and it will be a substantial issue in our society for the foreseeable future.

The recognition of mental disability claims under the Workers’ Compensation Act has placed a burden on legislatures and courts to weed out the fraudulent claims, while still awarding recovery to those individuals who genuinely deserve compensation. Because of the nature of PTSD, it is necessary to prevent those who would falsify their claims from collecting benefits from their employer. It is, however, imperative to ensure that the higher evidentiary thresholds in place to prevent fraud do not single out and exclude a class of workers because of the character of its employment. Illinois workers’ compensation law is flawed because it is inconsistent and can be interpreted to prohibit recovery for first responders when their traumatic events are compared to that of other first responders. The recognition of PTSD is a growing phenomenon, and first responders are exposed to some of the most traumatic events in our society. To deny recovery to first responders because of their training and regular traumatic experiences implies that they should be desensitized to the horrors that they encounter on a regular basis. The workers’ compensation law must not operate to desensitize first responders because their compassion for others is the driving force behind their heroic actions.

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119. The common law doctrine of “fireman’s rule” is a controversial issue of law which has received much criticism. It establishes that because of the unique training and inherent danger of firefighting, a firefighter cannot seek recovery in tort from a landowner for injuries sustained in furtherance of firefighting. This kind of reasoning is designed to prevent added liability on the homeowner and protect them from unforeseen liability. *Smithers v. Ctr. Point Properties Corp.*, 741 N.E.2d 1152, 1156-57 (Ill. App. Ct. 2000). The workers’ compensation system, however, is meant to be liberal in its protection to the worker, not the employer. Therefore, the fireman’s rule is easily distinguished and contrasted as to what is currently occurring with first responders in workers’ compensation.

### A. Illinois Case Law is Inconsistent

The issue becomes more problematic when dealing with the realm of administrative decisions that make up workers' compensation law. According to both the Workers' Compensation Act and the Occupational Diseases Act, decisions and conclusions of law made by the Illinois Workers' Compensation Commission are to be regarded as precedents for arbitrators in their administration of the law.<sup>120</sup> Therefore, previous Commission decisions set a dangerous precedent. The inconsistent decisions from the Commission create a situation where a claimant who faces an emotionally traumatic event, but who has delayed onset of PTSD symptoms, will be barred from recovery. These decisions may categorically preclude first responders from recovery for psychological injuries under the Workers' Compensation Act. The courts have allowed for the continuation of this problem by emphasizing the special training and routine exposure to traumatic events that first responders have in common. Through this reasoning, there is an alarming trend developing which states first responders should be immune to PTSD because of their training and previous experiences. This view indicates that first responders cannot be compensated for PTSD because the *General Motors* and *Chicago Board of Education* tests calls for the traumatic event to be out of the ordinary to the particular field of employment.

*Chicago Board of Education* actually states that the threshold is whether the mental disorder has arisen from situations of greater dimensions than that which all employees must face.<sup>121</sup> The court, however, provided contradictory language by stating that "the conditions allegedly producing the injury are no greater than those any teacher might face in an educational setting."<sup>122</sup> This language implied that the particular class of employment plays a role in compensation, when the court had already stated that claimants were to be

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120. 820 ILL. COMP. STAT. 305/19(e) (2008); 820 ILL. COMP. STAT. 310/19(e) (2008). Additionally, Illinois is one of nineteen states that currently publish their administrative decisions concerning workers' compensation. Publishing the decisions makes them available to practitioners for review, giving them somewhat more weight than a non-published decision. In Illinois, when presenting a case to the arbitrator, the parties will often use previous administrative decisions as persuasive authority to assist the arbitrator in making his decision to award or deny benefits. Therefore, misinterpretations of case law and unjust decisions may compound into trends that are widely followed, until a higher court provides an authoritative decision on how to handle the issue. Furthermore, because of legal costs, temporal issues, lack of faith for a reversal, and difficulty in getting a case to the trial court level, many claimants are stuck with the decisions of the arbitrator and the Illinois Workers' Compensation Commission.

121. *Chi. Bd. of Educ. v. Indus. Comm'n*, 523 N.E.2d 912, 918 (Ill. App. Ct. 1988).

122. *Id.*

compared to the entire workforce in general. Irregularities in the reasoning of the court have led to inconsistent opinions regarding the proper method of comparison in workers' compensation.

Placement into Larson's category four creates a new and unique problem for individuals seeking compensation for mental/mental claims.<sup>123</sup> The effects of the modifications of the *Pathfinder* test have been described above, but the most important issue is how to define what is extraordinary or unusual in the workplace, for purposes of both claims of workers' compensation and occupational diseases. The two variations of interpretation that claimants have faced are (a) incidents that are extraordinary and unusual compared to that experienced by all employees in general,<sup>124</sup> and (b) incidents that are extraordinary and unusual in light of what is experienced by employees in a similar vocation.<sup>125</sup> These two possible tests have led to unpredictability in the law for claimants and employers alike. Also, the latter reading creates a dire situation for first responders in their quest for recovery for mental disabilities. The Illinois General Assembly or the Illinois Supreme Court must resolve the conflict created by conflicting judicial decisions.

#### B. Other Jurisdictions Comparing Claimants to All Employees

Illinois need only look to other jurisdictions to find the correct approach in deciding compensable claims comparing claimants to the entire workforce, as opposed to comparing claimants only to their coworkers situated in the same field. A handful of prudent states have provided a more amicable approach to the dilemma. The cause of the claimant's mental injury should be compared to all other workers in the workforce generally and not just in respect to a specific class. When faced with this precise question, the Supreme Court of Maine decided that a comparison of trauma experienced by the injured employee to incidents experienced by the average of all employees is the proper method of determination, as opposed to the work pressures experienced by the average of a specific class of employees.<sup>126</sup> Likewise, the Supreme Court of Wisconsin held "mental injury non-traumatically caused must have resulted from a situation of greater dimensions than the day-to-day

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123. See Larson *supra* note 61.

124. See generally *Runion v. Indus. Comm'n*, 615 N.E.2d 8 (Ill. App. Ct. 1993) (applying the test that the mental disorder must arise from greater dimensions than *all employees* must face).

125. See *Ushman v. City of Springfield*, 05 IL.W.C. 08480, No 08 I.W.C.C. 0234 (Ill. Indust. Comm'n 2008).

126. *Caron v. Me. Sch. Admin. Dist. No. 27*, 594 A.2d 560, 561 (Me. 1991).

emotional strain and tension which all employees must experience.”<sup>127</sup> Wisconsin relies on the competence of its administrative hearing examiners to use their good judgment for protection against fraudulent abuse.<sup>128</sup> This was a cutting edge decision that came well before most states were even recognizing claims for mental disability. It is surprising that Illinois has not expressly adopted the guidelines from its sister state to the North. The precedents set in Maine<sup>129</sup> and Wisconsin<sup>130</sup> exemplify the most equitable approach for all employees, and especially for police officers, firemen, and personnel in the medical profession.

The idea behind workers’ compensation in Illinois is to provide financial protection to all workers with an employment related injury.<sup>131</sup> Thus, it should be readily apparent that first responders were meant to be covered by workers’ compensation statutes. Colorado, Maryland, North Carolina, and Virginia have all recognized that a mental disability may arise from the accumulation of first responders’ traumatic or stressful experiences as an occupational disease.<sup>132</sup> The Maryland court in *Means* held that first responders have jobs that are highly likely to produce PTSD, and the simple fact that this ailment is difficult to verify is no reason to deny compensation.<sup>133</sup> In the North Carolina case *Pulley*, the court stated the employment, itself, must create situations that expose the claimant to a higher probability he or she will develop the disease in question.<sup>134</sup> Thus, Maryland and North Carolina not only recognize that first responders can develop compensable PTSD, they tend to view employees in those fields of employment as more susceptible to succumbing to mental injury or disease. Illinois has been reluctant to allow such recovery, perhaps out of fear of the “slippery slope” which might result. The courts may fear that if recovery is allowed for first responders, there will not be sufficient

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127. Sch. Dist. No. 1, *Brown Deer v. Dept. of Indus., Labor and Human Relations*, 215 N.W.2d 373, 377 (Wis. 1974).

128. *Id.* at 378.

129. *See Caron*, 594 A.2d 560.

130. *See Brown Deer*, 215 N.W.2d 373.

131. *Flynn v. Indus. Comm’n*, 813 N.E.2d 119, 125 (Ill. 2004).

132. *See Means v. Baltimore County*, 689 A.2d 1238 (Md. 1997) (observing that PTSD could be an occupational disease where a fire department medic and the PTSD occurred as a result of several work related incidents); *Fairfax County Fire & Rescue Dep’t v. Mottram*, 559 S.E.2d 698 (Va. 2002) (allowing a claim for PTSD as an occupational disease when firefighter claimant developed PTSD as a result of multiple traumatic events related to his employment); *City of Aurora v. Indus. Comm’n of Colo.*, 710 P.2d 1122, 1123 (Colo. Ct. App. 1985) (awarding compensation for a police officer who developed PTSD over time from generally traumatic work conditions); *Pulley v. City of Durham*, 468 S.E.2d 506 (N.C. Ct. App. 1996) (allowing benefits for a police officer suffering from PTSD which arose from multiple work related occurrences).

133. *Means*, 689 A.2d at 1243.

134. *Pulley v. City of Durham*, 468 S.E.2d 506, 510 (N.C. App. Ct. 1996).

safeguards to prevent fraudulent claims of employment related mental disabilities because, in theory, any first responder could make such a claim regardless of its veracity. While this is a valid concern, this limitation takes the issue away from the trier of fact, where it rightfully belongs.

### C. Fear of Fraud

Consequently, the quintessence behind making the determination as to what is extraordinary in the workplace based on respective fields of employment is the fear of fraud. This is a legitimate concern because all first responders could claim PTSD at the end of their careers or at any stage therein. There is no doubt that all first responders are subjected to traumatic experiences throughout the duration of their employment. Yet, to deny all first responders compensation because of the potential for abuse is counterintuitive. Both the courts and the Commission deal with fraudulent claims on a frequent basis. To take the determination of fraudulent claims made by first responders out of the hands of the workers' compensation adjudication system is not an equitable approach. It implies that neither the courts nor the Commission can adequately detect fraudulent claims made by first responders, and thus that they should be categorically denied compensation. But, this is not the case.

There are a number of safeguards within the framework of the workers' compensation system to prevent abuse by fraudulent claims. First, the claimant has the burden of establishing that he or she actually has a disabling mental injury. This means the claimant will have to provide testimony from a medical examiner that believes the claimant suffers from PTSD or a similar ailment. Second, the adversarial nature of the proceedings allows for the employer to test the legitimacy of the claimant's claim. Employers have the right to request that the injured employee be examined by an independent medical examiner, in order to check the veracity of the claimant's claim. Third, the Commission has the opportunity to take into account any conflicting testimony regarding the authenticity of the claim and may then make a discretionary ruling on the matter. This means that both the arbitrator and the Commission act as discretionary safeguards against recovery based on fraudulent claims. Additionally, the employer can seek judicial review of the Commission's decision to ensure that a claim for mental disability is valid. Therefore, the workers' compensation system is sufficiently structured to prevent fraudulent abuse.

#### D. The Correct Approach is to Compare Claimants to the Entire Workforce

Grouping individuals into specific classes can create inequality. The standards of recovery are different for first responders as compared to the rest of the working public in this situation. Comparing the stressors of first responders to those experienced by other first responders will lead to inequitable results. There are sufficient safeguards throughout the judicial process to ensure that fraudulent claims are rooted out. After all, the trier of fact, whether judge, jury, or arbitrator, should be afforded the latitude necessary to determine if there is fraud or abuse present within the claim brought by the claimant. Comparing employees to other employees within their class in an objective fashion takes the trier of fact out of the equation. This is wrong; the legal system in the United States has always allowed the opportunity to rely on the trier of fact to determine what is credible. First responders should be guaranteed this same protection of their rights.

In route to resolving this issue, the eyes of the lower courts and the Commission should turn to the Illinois Supreme Court or the Illinois legislature. It is the General Assembly, and not the courts, that has the prerogative to legislate. The court's role is to interpret and construe existing legislation. The Workers' Compensation Act and the Occupational Diseases Act are silent with regard to the applicable test for determining what constitutes "extraordinary events" in a workplace which can lead to mental injuries. The Acts, however, are to be interpreted liberally to effectuate their main purpose of providing financial protection to claimants who were injured as a result of their employment.<sup>135</sup> Thus, the courts interpreting the Supreme Court's decision in *Pathfinder* should not take away liberties by narrowing the applicability of decisions. The proper method for deciding what constitutes a compensable mental claim should be the one that provides for liberal recovery, and the workers' compensation system should be left to defend against fraudulent claims. Therefore, the test should compare first responders to the entire workforce in general, and not to their coworkers in the same field of employment.

#### IV. CONCLUSION

There are inconsistent interpretations of *Pathfinder* and subsequent cases dealing with mental injuries in workers' compensation. On one hand, the

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135. Mahoney v. Indus. Comm'n, 843 N.E.2d 317, 321 (Ill. 2006).

applicable test can be interpreted to mean that employees are judged against all other employees when it takes account of the necessity of an event being extraordinary in the workplace to suffice for a traumatic stressor causing mental injury. On the other hand, the test has been interpreted to hold that the extraordinary event should be greater than that experienced by employees in the same field of employment as the claimant claiming mental injury from work related stressors. The latter approach is under-inclusive and can run the risk of battling against the general purpose of the workers' compensation system by denying recovery to deserving injured employees. The confusion of which test to apply has, at times, led to the categorical denial of first responders in their plight for compensation for mental injuries arising from their employment.

Because of the confusion on how to interpret the holdings of *General Motors* and *Chicago Board of Education*, Illinois lawmakers or the Illinois Supreme Court must hand down definitive guidance on whether the applicable test should be that traumatic events be extraordinary to the employment setting compared to what is (a) outside the norms of any employment setting, or (b) outside the norms of the particular class of employment in which the claimant works. Nevertheless, positive steps must be taken in order to reverse the misinterpretations of the holding in *Pathfinder*.

For first responders to receive equal treatment, it is imperative that they are compared to employees of all other professions. Otherwise, an important part of our society could be left without the availability of compensation for mental disabilities caused by the unimaginable hardships intrinsic to their employment. The protection of the rights of employees who have suffered mental injury due to extraordinary traumatic incidents during the course of employment outweighs the possible harm that may result to employers and their insurance carriers as a result of the potential fraudulent abuse by nefarious claimants. The most equitable and just approach to the matter is to compare claimants and the events causing their mental injuries to that which all employees must face in the workforce.

