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SUPREME COURT OF ARIZONA

TIMOTHY MATTHEWS Petitioner, v. INDUSTRIAL COMMISSION OF ARIZONA Respondent, CITY OF TUCSON Respondent Employer, TRISTAR Respondent Carrier.	Arizona Supreme Court No. CV-21-0192-PR Court of Appeals Division Two No. 2 CA-IC 2020-0001 ICA Claim No. 20182-540202 Carrier Claim No. 18736339

PETITIONER'S SUPPLEMENTAL BRIEF

ISSUE GRANTED FOR REVIEW

Is Ariz. Rev. Stat. § 23-1043.01 (B) unconstitutional as applied to claimants who work in high-stress occupations such as law enforcement?

INTRODUCTION

The "mental injury" statute, A.R.S. § 23-1043.01 (B), is unconstitutional as applied to claimants who work in high-stress occupations such as law enforcement because it requires an additional hurdle – "unusual" stress -- to coverage that conflicts with the broader coverage mandate required by Art. XVIII, Sect. 8 of the Arizona Constitution, which guarantees compensation for any injury-by-accident arising from a *necessary risk* of employment. "… [B]y barring compensation for those workers who, like Matthews, suffer mental injury on jobs where encountering human trauma is commonplace, the statute effectively bars compensation for the precise universe of vocations posing the greatest risk of mental injury." *Matthews v. Indus. Comm'n.,* 251 Ariz. 561, ¶ 31, dissenting opinion (Ct. App. 2021) (hereinafter "pending opinion" or "dissent").

At a June 2018 SWAT callout, Tucson law enforcement officer Timothy Matthews was injured working as a domestic violence detective, doing what detectives do. Detective Matthews responded to the callout involving a man

barricaded in a garage with a weapon and hostages. Soon thereafter, Matthews watched the man die from a self-inflicted gunshot blast the chest on a live-feed TV screen. He then inspected the dead man's body from head to toe and gathered evidence from a chaotic crime scene. There was no question the Matthews's injury was in the course of his employment and arose from his employment and that it was caused by a necessary risk of his employment as a law enforcement officer. The city's own medical expert concluded that Matthews's disabling PTSD was "almost exclusively related to his employment". Petitioner's Reply Brief, p. 6. The police experts agreed that the gruesome tasks Matthews was called upon to perform were necessary duties of a police detective. Police expert Sgt. Spencer described the situation as a "high-danger incident" and that it was not "atypical for a domestic violence situation to go bad and end in a self-inflicted death." *Matthews* at 566, ¶ 8. Nevertheless, Matthews's workers' compensation claim that he filed for the resulting disabling PTSD was denied by the ALJ who applied the mental injury statute, and the denial upheld by the Court of Appeals because the stress Matthews encountered did not satisfy the "unexpected, unusual or extraordinary" requirements of the mental injury statute.

This brief considers the ways in which the mental injury statute is unconstitutional, particularly as applied to workers in high-stress occupations such

as law enforcement officers like Matthews. In short, the statute violates the Constitution for these reasons:

1. It operates perversely to bar an injury-by-accident that arises out of the necessary risks of high-stress occupations like the hazardous duties required of law enforcement officers.
2. It impermissibly redefines legal causation for mental stress injuries and restricts compensation for mental injuries to those caused by something more than a "necessary risk".
3. Coverage of mental injuries from high-stress jobs is within the Constitution's true meaning of the term "injury-by-accident".
4. Its application denies valid claims for law enforcement officers like Matthews and also undermines the principles of workers' compensation as envisioned by the Constitution – to spread the cost of on-the-job injuries for services that benefit the public and the community.

ARGUMENT

1. Necessary risks of high-stress occupations

The mental injury statute's "unexpected, unusual or extraordinary" stress requirement applied to claimants in high-stress occupations, like Matthews,

perversely bars what would otherwise be valid claims under the express language of the Constitution – that qualified workers are entitled to compensation for all work-related injuries from "*any accident* arising out of and in the course of, such employment, is caused in whole, or in part, or is contributed to, *by a necessary risk or danger of such* employment' or *necessary risk* or *danger inherent in the nature* thereof …". Ariz. Const. Art. 18, Sect. 8.

First, under the constitutional mandate, Matthews suffered a personal injury by accident – his disabling PTSD – arose out of and in the course of his employment, and was caused in whole or in part by a necessary risk of his employment as a police officer. Police experts testified Matthews was performing the necessary job duties of a detective, which included witnessing human death from suicide and then "processing" the body for evidence. But the ALJ applied the statute and denied the claim. "In essence, Matthews was denied compensation because his job necessarily included the risk of causing the very mental injury he suffered." Dissent at ¶ 22.

Second, the statute raises the legal causation standard higher than what is required under the constitutional mandate. The statute limits compensation for mental injuries "unless some unexpected, unusual or extraordinary stress related to the employment" was a cause of the mental injury. A.R.S. 23-1043.01 (B). For

gradual mental injury claims, the court has adopted the "hypothetical 'reasonable person' working alongside the claimant" by way of ascertaining "the stressfulness of work-related events" and the reasonableness of the claimant's reaction, "*so as to assure the work-related nature of the injury* as compared to non-work related stress." *Barnes v. Indus. Comm'n*, 156 Ariz. 179, 183 (Ct. App. 1988) (emphasis added). This means that for law enforcement officers, their stress is compared to that of other officers "in that same type of duty." *Sloss v. Indus. Comm'n*, 121 Ariz. 10, 11-12 (1978).

The "hypothetical 'reasonable' person working alongside the claimant" is a particularly devasting comparison for claimants in high-stress occupations. As one commentator observed:

> "[T]he application of the unusual stress test to high stress occupations may result in the elimination of genuine claims. When an entire occupation is subject to unusual stress, the stress endured by a claimant may be ordinary as compared to others within the same occupation."

Lee Anne Neumann, Comment, *Workers' Compensation and High Stress Occupations: Application of Wisconsin's Unusual Stress Test to Law Enforcement Post-Traumatic Stress Disorder*, 77 Marq. L. Rev. 147, 171 (Fall 1993).

In the case at bar, Matthews's mental injury is PTSD, whose diagnostic criteria in the DSM-5 required a "qualifying" exposure to a traumatic event, such as witnessing unnatural human death and provided an objective basis for

determining work-relatedness[1]. Dissent at ¶ 22. But because Matthews was compared with other officers "in the same type of duty", the application of the statute operated to deny his claim in spite of an undisputed connection between the precipitating work event of June 17, 2018 and Matthews's resulting PTSD injury, and even though Matthews's exposure occurred while he performing the necessary duties associated with his employment as domestic violence detective. In the case at bar, Matthews's job "necessarily included the risk of causing the very mental injury" he suffered. *Id*.

Prior equal protection constitutional challenge to the statute

The pending opinion in ¶ 12 stated that the appellate court has addressed a constitutional challenge to the mental injury statute before in *Findley v. Indus. Comm'n*, 135 Ariz. 273 (Ct. App. 1983), but that is premised on the pending opinion's assertion in ¶ 18 that the mental injury statute "addresses a unique type

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1 Modifications in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5) included objectively defining trauma exposure, eliminating the subjective component of the definition of trauma, and relocating PTSD from the anxiety disorders category into a new category, "Trauma and Stressor-Related Disorders". A. Pai, A. Suris, and C. North, Review. "Posttraumatic Stress Disorder in the DSM-5: Controversy, Change, and Conceptual Considerations." Behav. Sci. v. 7 (1) (March 2017). (Available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5371751/ , last visited Feb. 27, 2022).

of injury" that was not specified or contemplated by the framers of the constitution or the Workers' Compensation Act ("WCA"). The pending opinion's assertion that the "legislature expanded rather than restricted the scope of compensable accidents when it enacted" 1980 mental injury statute expanded to WCA lacks "textual support" for the exclusion and defies "settled norms of textual interpretation." Dissent at ¶ 26.

Matthews's constitutional challenge differs from Findley's equal protection argument, which asserted the statute 'provide[d] different standards of proof for all claimants as opposed to those with a mental injury." *Findley* at 276.

Nevertheless, in the case at bar, this Court rephrased the question presented to consider whether the statute violates the Constitution as applied to claimants in high-stress occupations, which warrants a closer look of the appellate court's opinion in *Findley*. In *Findley*, the appellate court generally concluded since all those injured workers claiming stress-related mental injuries were treated equally by the statue and since the classification of the group was reasonable, the statute did not violate the Constitution. *Findley* at 276.

But when fairly considering the statute's "unusual" requirement, it treats mental injury claimants in high-stress occupations differently from others who

have sustained a mental injury[2]. For example, in Matthews's case, the city's police expert had difficulty identifying even one stress-producing police response that would qualify as unusual, unexpected or extraordinary – not a plane crash with multiple victims, not a mass shooting, not even when a fellow officer is shot[3]. The hazards of the job, the dangers of the employment, the inherent nature of high-stress occupations require law enforcement officers to assume these risks when they respond in the faithful execution of their duties. However, they did not assume being left out of the workers' compensation system whose purpose is for the "relief and protection" of workers and their dependents "from burdensome, expensive and litigious remedies" for injuries sustained on the job.

Moreover, the *Findley* court never addressed whether the statute treats all claimants who have sustained mental injuries differently from those who have sustained physical injuries. In this respect, the statute discriminates against all

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2 "[T]o require a worker in a highly stressful occupation to prove that she was subject to unusual stress may be unfair, particularly when the amount of stress normally present in her work is clearly sufficient to cause mental trauma." Glenn M. Troost, Comment, *Workers' Compensation and Gradual Stress in the Workplace*, 133 U. Pa. L. Rev. 847, 864 (1985).

3 Retired Police Chief Benny Click testified, "You know, I have been to plane crashes, I have been to mass shootings, and, yeah, they are terrible – they are terrible, they are tragedies … they are not unusual or unexpected or extraordinary." Petitioner's Opening Brief, p. 9, p. 31.

workers with stress-related mental injuries because workers who suffer physical injuries are uniformly protected by the constitutional mandate.

Matthew's injury by accident arose out a necessary risk of his employment as a law enforcement officer. Officers like Matthews take on the risk of a dangerous, highly stressful, and essential job, but they should not undertake the risk of being excluded from the protections of the Workers' Compensation Act. The mental injury statute's "unusual" stress requirement placed a higher hurdle for Matthews to clear, even though his injury-by-accident arose out a necessary risk of his employment.

2. Constitution covers mental injuries like Matthews's PTSD injury.

The coverage mandate of Art. 18, Sect. 8 requires compensation for a "personal" injury from "any accident arising out of and in the course of" employment, 'caused in whole or in part or contributed to by a necessary risk or danger of employment, or necessary risk or danger inherent thereof.' The Constitution does not expressly exclude mental injuries. "As the record demonstrates before us, mental injuries – no less than knee injuries, back injuries, or any other species of physical injury – can debilitate a worker. The majority has not explained why the framers would have intended to preclude compensation for them." Dissent at ¶ 26. "In essence, my colleagues ask that we exclude a subset of

injuries without express textual support for that exclusion in the Arizona Constitution." Dissent at ¶ 26. A statute cannot bar compensation for injuries directly caused by known and expected hazards of the workplace.

The pending opinion's failure to analyze the constitutionality of the mental injury statute under *Grammatico v. Indus. Comm'n*, 211 Ariz. 67 (2005) relied on false distinction between physical and mental injuries, and the unsupported premise that the mental injury statute 'expanded' coverage of the act to include heart attack stress and mental injury stress injuries. *Compare* pending opinion at ¶ 14 and ¶ 18 *with* dissent at ¶ 23, ¶ 27 and ¶ 33. Since there is no express exclusion of mental injuries in the Constitution, the court should rely on the "settled norms of textual interpretation" which "compel [it] to presume that general terms are intended to 'produce general coverage'". Dissent at ¶ 26.

Furthermore, the issue of legal causation applies all industrial injuries. *DeSchaaf v. Indus. Comm'n*, 141 Ariz. 318, 320 (Ct. App. 1984), which is why this Court's analysis of a statute's constitutionality is appropriate in the case at bar. *Grammatico* demonstrated how Arizona courts should analyze whether a statute imposes a legal causation burden beyond what is allowed in the constitution. "Under Art. 18, Sect. 8, an employee demonstrates legal causation by showing that a necessary risk or danger of employment caused or contributed to the industrial

injury in whole or in part." *Grammatico* at 72, ¶ 23. As this Court explained in *Grammatico,* while the legislature "has some latitude to establish the requisite medical causation", it cannot "define legal causation in a statute in a way that conflicts with Article 18, Section 8 because the legislature 'cannot enact laws which will supersede constitutional provisions adopted by the people'". *Grammatico* at 72, ¶ 21, citing *Kilpatrick* at 415-16.

The mental injury statute's requirement that the stress from the encountering event be "unexpected, unusual or extraordinary" restricts legal causation in a similar way as the unconstitutional subsections in *Grammatico* restricted legal causation – by denying claims otherwise covered by the plain language of art. XVIII, § 8. In the case at bar, the "unexpected, unusual or extraordinary" stress requirement denied compensation *even when* the necessary risks or dangers of being a domestic violence detective – responding to a SWAT callout, watching a person die from a self-inflicted gunshot wound, and "processing the body" from head to toe -- caused or contributed to Matthews's disabling PTSD injury.

The pending opinion's failure to measure the mental injury statute using the constitutional analysis in *Grammatico* creates fatal flaws in its analysis and conclusions. *Compare* pending opinion ¶ 13-14 *with* dissent ¶ 23, ¶ 33.

3. Matthews suffered an injury-by-accident within the meaning of the Constitution.

As noted in the "Petition for Review" and in the dissent at ¶ 30, decades-old Arizona case law support the conclusion that Matthews's disabling PTSD was an injury-by-accident and falls within the protection of the Constitution and the Workers' Compensation Act. Petition for Review, p. 13. ("PR").

The court's understanding of the true meaning of "accident" in the Constitution developed through a line of cases from *Goodyear Aircraft Corp. v. Indus. Comm'n*, 62 Ariz. 398 (1945), to *Pierce v. Phelps Dodge Corp*, 42 Ariz. 436 (1933) (overruled), to *In re Mitchell*, 61 Ariz. 436 (1944) (rejecting prior holding in *Pierce*), to *Jones v. Indus. Comm'n*, 81 Ariz. 352 (1957), and then to *Paulley v. Indus. Comm'n*, 91 Ariz. 266, 272 (1962). In *Paulley*, this Court put to rest the debate about the term "accident":

> "For this reason we again announce that Arizona follows the English and now majority American view that an injury is caused 'by accident' when either the external cause or the resulting injury itself is unexpected or accidental. This construction of the phrase 'injury by accident' is most likely to effectuate '* * * the evident purpose of the law that those covered by the act who are injured while engaged in industrial work are to be compensated.'"

Paulley at 272.

Contrary to the pending opinion's assertion, "both controlling Arizona jurisprudence and the plain text of the Arizona Constitution support that mental

injuries arising from the predictable hazards of the workplace are covered." Dissent at ¶ 30.

Arizona recognized stress injury cases – both heart attack and mental stress – decades before the 1980 statute. Dissent at ¶ 27. This history of jurisprudence conflicts directly with pending opinion's theory that the statute expanded the coverage to mental injuries, which would have allowed the Legislature to set the criteria for legal causation. *See* pending opinion at ¶ 18.

Moreover, nowhere in the constitutional provision is "injury" only defined as doing damage or harm to the physical structure of the body. Instead, coverage is given and compensation is owed for a "personal injury to or death of" any claimant from "any accident arising out of and in the course of, such employment, is caused in whole, or in part, or is contributed to, by a necessary risk or danger of such employment, or necessary risk or danger inherent thereof." art. 18, sect. 8. [4]

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4 According to Professor Larson's authoritative treatise on workers' compensation, "…[T]here really is no valid distinction between physical and 'nervous' injury. Certainly modern medical opinion would support this view … . It is an old story, in the history of law, to observe legal theory constantly adapting itself to accommodate new advances and knowledge in medical theory." Arthur Larson and Lex K. Larson, *Larson's Workers' Compensation Law* § 56.04 (2020).

4. The mental injury statute undermines the principle of workers' compensation

The mental injury statute undermines two fundamental principles of our workers' compensation system because, when applied, it has barred what would have been a compensable claim under the coverage mandate of the Constitution.

"The underlying principle of the compensation system is a trade of tort rights for an expeditious, no-fault method by which an employee can receive compensation for accidental injuries sustained in work-related accidents." *Stoecker v. Brush Wellman, Inc*., 194 Ariz. 448, 451 (1999). Another purpose "was to dispense, so far as possible, with litigation between employer and employee and to place upon industry the burden of compensation for injuries caused by the employment." *Pressley v. Indus. Comm'n*, 73 Ariz. 22, 28 (1951).

Holding the mental injury statute unconstitutional will not result in a wave of questionable claims. Claimants in high-stress occupations will still have the burden of showing their PTSD injury-by-accident was in the course of their employment and arose out of a necessary risk of their employment. Claimants will bear the burden of proving medical causation as well.

Medical science's ability to develop better diagnostic criteria and tools for mental injuries and disease is evident in the DSM-5's identification of objective

criteria for diagnosing PTSD. This should allay past concerns about establishing the causal nexus between the mental stress and the injury.

"The overriding theme of the system, as evidenced by our constitution, statutes, and case law, has been to preserve a claimant's opportunity to be made whole to the fullest possible extent – nothing more nor less." *Aitken v. Indus. Comm'n*, 183 Ariz. 387, 392 (1995).

Matthews took an oath to serve his community, to safeguard lives and property, and also to respond to any number of high-stress situations: horrific accidents, a standoff with a barricaded man armed with a shotgun, watching unnatural deaths by suicide, examining dead bodies, and collecting evidence at bloody crime scenes.

"… [B]y barring compensation for those workers who, like Matthews, suffer mental injury on jobs where encountering human trauma is commonplace, the statute effectively bars compensation for the precise universe of vocations posing the greatest risk of mental injury." Dissent at ¶ 31.

The limited recovery provided under the WCA is a reasonable price to pay for the undisputed mental injury Matthews sustained from the necessary risks of his employment, and it is one envisioned and enshrined by the Constitution.

CONCLUSION

The workers' compensation "mental injury statute" violates article XVIII, § 8 of the Arizona Constitution because it impermissibly heightens the legal causation standard by covering a mental injury only upon a showing of "unexpected, unusual or extraordinary stress" related to the work. The constitution provides qualified employees coverage for injuries from "*any* accident arising out of and in the course of" employment that are "caused in whole or in part, or contributed to, *by a necessary risk or danger* of such employment, or *a necessary risk or danger inherent* in the nature thereof". art XVIII, sect. 8 (emphasis added).

By requiring "unexpected, unusual or extraordinary stress" for a mental injury by accident (language not used to qualify any other injury by accident), the mental injury statute places an additional hurdle to coverage that conflicts with the mandate for broader coverage required by the constitution. The "unexpected, unusual or extraordinary" stress standard has also allowed defendants to implicitly raise an "assumption of the risk" defense to defeat claims for mental injuries, thus perversely injecting a prohibited defense back into Arizona's workers' compensation system.

The mental injury statute is unconstitutional as applied to Matthews because it denied compensation for an injury-by-accident that arose out of the necessary risks of his employment as police officer. The statute breaks the fundamental promise of our workers' compensation system – "that it is a trade of tort rights for an expeditious, no-fault method" for employees to receive a limited recovery for work-related accidents. *Grammatico* at 71, ¶ 17. Law enforcement officers like Matthews carried out their duties for the public who benefitted from their protection and faithful service. Law enforcement officers like Matthews, who suffer undisputed, disabling PTSD from an accident that arises out of a necessary risk of their employment, should not be denied the limited benefits guaranteed to them by the workers' compensation provisions of our state constitution.

The statute, A.R.S. 23-1043.01 (B), impermissibly redefines legal causation for mental injuries, restricts compensation for mental injuries to only those caused by something more (unusual stress) than necessary risk or danger of employment, and therefore, contradicts the scope of coverage mandated and envisioned by Art. 18, § 8 of the Arizona Constitution.

For these reasons, the statute is unconstitutional.

RESPECTFULLY SUBMITTED this 28th day of February 2022.

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