Stress and the Emerging Legal Liability Through Workers' Compensation: Some Suggestions for Management Action

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Abstract

In this paper we reviewed the significant court cases which laid the foundation for the compensation of stress-related problems under Workers' Compensation Laws of various states in the country. The significance of the court rulings are discussed in relation to routine personnel decisions. The last part of the paper is devoted to discussing certain recommendations to corporate management.

Introduction

The problem of stress in the workplace has taken on a new dimension, one which will certainly command the attention of today's top business management. Across the country there has been an alarming increase in the number of cases filed in courts and to Workers' Compensation Boards asking for compensation from the psychological and emotional impact of job-related stresses. Recent corporate streamlining and the general uncertainty of the business environment have aggravated stress in many companies to a critical level. The expectation is that in the next few years the courts will be overburdened with cases regarding stress-related problems.

Stress for women is compounded by the pressures of maintaining a home and a family and is now viewed as a major deterrent to their upward mobility in corporate and professional organizations. Not surprisingly, the working women want employers to help solve the problem. The establishment of employer-sponsored day care centers, flexible time to attend to family needs, time-off to respond to illness in the family and, most recently, some kind of assistance in caring for an aging parent, top the needs lists of most women.

Evidently, job-related stress is no longer an individual problem or a problem solely between the employer and the employee. It is now a social problem which the courts are willing to resolve. These situations bring a new dimension to managing human resources in the organization. These issues are perhaps more difficult and troublesome than previous issues with which management had to deal (such as equal opportunity questions, sex issues, etc.).

The courts' interest manifests the complexity of the problem, not only in the harm to the individual resulting from the daily emotional job pressures, but also in the measures the organization initiates to alleviate stress and to help employees cope with the resulting psychological problems. Such measures may be significant factors in the severity of the judgment that the courts may impose against the organization.

In this paper we will discuss court cases which laid the foundation for monetary awards, through Workers' Compensation, to employees resulting from job-related stress. Then we will focus on the specific rulings which have far-reaching significance in relation to routine personnel matters such as pre-employment physical examination, job description, proper matching of skills of employees with the requirements of the job, changes in job description and performance reviews. Some discussion is provided regarding the compensable nature of heart problems aggravated by stress as well as the "unusual strain test" used by the courts in resolving these cases. The remainder of the paper will be devoted to certain recommendations. These include how to avoid the costs of compensation awarded to employees, bad publicity, low productivity, divisiveness, and the disruption that legal battles with employees normally bring to the company.

Significant Cases

The earliest cases, principally in Texas, California and Michigan, form the nucleus of support for the growing number of favorable decisions involving stress-related problems. These decisions have significant impact on similar court cases throughout the country. The underlying concepts supporting these decisions are based on the traditional, liberal interpretation of Workers' Compensation Laws favoring the employees, and the causal relationship between the stressor and the injury. Unfortunately, identifying a causal relationship acceptable to the courts is quite a problem in many circumstances, making it difficult to predict the possible outcomes of court cases. The trend, nonetheless, is to award compensation to employees. At present over fifteen states have adopted specific rules to make disability payments where work stress caused severe anxiety, depression, and other mental problems.(1) We will review some of the significant cases.

American General Insurance Co. v. Bailey(2) - Considered to be the earliest case that dealt with job-related stress, the Bailey case was decided in Texas in 1955. It awarded an ironworker compensation for physical injury as a result of an accident to a co-worker who plunged to his death after one end of a scaffold gave way. The plaintiff escaped injury when he was entangled in a cable which prevented him from falling down. Subsequent to the accident, the plaintiff experienced blackouts, problems in sleeping due to violent nightmares, supersensitivity to pain, an episode of paralysis when attempting to work on a steel beam, and other physical and mental disorders. In rendering its judgment, the trial court found a causation between the accident and the physical condition of the worker.

On appeal, the Appellate Court reversed the trial court's findings on behalf of the worker by making a distinction between the compensable nature of an injury and disease under Texas law. Injury, under the law, is construed to be harm or damage to the physical structure of the body, and disease (such as mental illness, neurosis or infection), to be compensable, must be a natural result of such injury. In effect, the Texas law requires causation between injury and disease resulting from a single discrete event (Emphasis added).

While the Bailey case was considered a setback to workers suffering from mental disability, this case was noteworthy because the trial court attempted to establish a cause-and-effect relationship between the accident and the subsequent mental disorder of the plaintiff. However, the negative impact of the Bailey case did not last long because other jurisdictions have expanded the meaning of injury to include psychological injury similar to that suffered by the plaintiff in the instant case. Additionally, the single discrete event required under the Texas law was replaced by a broader concept of repetitive events which allow liberal interpretation of Workers' Compensation Laws in many jurisdictions. Under the concept of repetitive events, the injury does not have to be the result of one, single, discrete event as required under the Texas law; rather, it can be the outcome of series of repetitive occurrences. That is why a constant stressful environment can establish a cause-and-effect relationship between the physical injury and the mental or psychological injury.

Carter v. General Motors Corporation(3) - The Carter case was decided in Michigan involving an assembly-line worker whose supervisor criticized him frequently for his inability to keep pace with the speed of the assembly line. As a result, the worker suffered an emotional breakdown described as paranoid schizophrenia, which the Supreme Court of Michigan found to be compensable under the Workers' Compensation Act of the State of Michigan.

Interestingly, the court in the instant case took a broad view of the worker's problem as a result of the work environment which delivered a psychological injury to the "structure of the body". The plaintiff, James Carter, after five months of lay-off, was recalled by General Motors to work in a "brace job", but was transferred to another job after a few days. The new job required keeping up with an assembly line which moved too quickly for the plaintiff. To remedy the problem, Carter worked on two hub assemblies at a time, but apparently mixed up the assembly parts when he placed them on the conveyor belt. His problem was aggravated because his foreman repeatedly instructed him not to work on two assemblies at the same time. In short, his problem was a vicious cycle, a no way out situation; when he worked on one assembly at a time he fell behind, when he worked on two assemblies he got the parts mixed up, and the foreman berated him. The criticisms of the foreman, and perhaps, fear of losing his job after a long lay-off were too much for Carter. In addition, Carter had a history of mental instability which medical testimony established as a predisposition to development of a schizophrenic disorder which was apparently aggravated by his production line assignment.

The significance of the Carter case can be summarized as follows: (1) The court emphasized that the purpose of Workers' Compensation Act was intended to compensate workers, not by reason of the injury suffered, but by virtue of the loss of earning power. The latter makes no distinction whether the loss is due to physical injury or emotional or psychological injury. This is contrary to the distinction made in the Bailey case regarding physical injury and disease. (2) The single event doctrine established under the Bailey case became irrelevant in the Carter case, not only because Carter did not suffer any injury to the "physical structure

of his body" caused by a single condition, but also because the emotional or psychological injury was the result of a constant happening, i.e., a repetitive event. (3) The causal connection between the event and the injury, which was paramount in the Bailey case and upon which the single discrete event stood, was not a factor in the Carter case, even with the plaintiff's pre-employment emotional instability. Evidently, the court was satisfied that the series of events caused, or perhaps aggravated, the condition of the plaintiff which resulted in the disability. Likewise, the Carter case opened a new dimension to the problem by taking on the assembly line environment which established connection between such an environment and psychological or emotional (basically stress-related) problems of the plaintiff.

Wolfe v. Sibley, Lindsay Curr Co.(4) - While the court sided with Carter allowing him to receive compensation for his emotional and psychological problems, the decision in Wolfe vs. Sibley, et. al., provided a more liberal recovery of compensation for a similar problem. This case involved a secretary, Diana Wolfe, who assumed most of her superior's responsibilities due to his nervous condition. Mrs. Wolfe tried to comfort her boss, only to find his body in a pool of blood in his office after he committed suicide. Beset by a feeling of guilt for her inability to prevent the death of her supervisor, Mrs. Wolfe was unable to work and was subsequently hospitalized. Her psychiatrist diagnosed her case as an acute depressive reaction. The Court of Appeals of New York held that psychological or nervous injury caused by psychic trauma was compensable to the same extent as physical injury. In addition, the court noted that Workers' Compensation is designed to shift the risk of loss of earning capacity resulting from industrial accidents from the worker to industry and, ultimately, to the consumer. Consequently, the consideration of lost earnings and the remedial nature of Workers' Compensation Laws require liberal interpretation in favor of the employee.

Alcorn v. Arbo Engineering(5) - A final noteworthy case is Alcorn vs. Arbo Engineering in which the defendant, a field superintendent, disparaged Manuel Alcorn, the plaintiff, of "his race in a rude, violent, insolent manner for the purpose of inflicting mental and emotional stress".(6) The incident caused Alcorn mental shock, nausea and insomnia, sending him to the hospital for several weeks. The Supreme Court of California held that such an act was an invasion of one's mental and emotional tranquility and therefore, an injury which is compensable under Workers' Compensation.

Win Some, Lose Some

Apparently, the favorable rulings cited above were not guarantees to employees receiving compensation under Workers' Compensation, even to those with identical circumstances. The following cases are noteworthy.

In Maksyn v. Transportation Insurance Company,(7) the Supreme Court of Texas reversed a lower court's award for disability compensation holding that damage or harm caused by a repetitive, mental, traumatic activity, as distinguished from a physical activity, cannot constitute an occupational disease. The case involved Joe Maksyn, who for forty-three years, starting at age seventeen, worked for a publishing company. He started as a copy boy and rose through various positions to an executive level. His last position as production manager was quite hectic. He often spent sixty-five hours a week on the job. His last few months were even worse. Maksyn spent eighty-seven hours a week on the job, often missing lunch and even dinner. Maksyn's condition was described as "after all those years he succumbed to the pressure, mental strain, overwork and exhaustion which led to hypertension, nervousness, vertigo, anxiety, depression, and inability to perform his work."(8) Unfortunately, the definition of occupational disease was changed by the Texas Legislature after 1971. It said, in effect, that such diseases must have been caused by physical, traumatic activity, rather than by mental, traumatic condition or a build-up of emotional stress over time.

In another case, LaBuda v. Chrysler Corporation(9), the Court of Appeals of Michigan denied compensation to a plaintiff who developed a nervous condition resulting from his inability to perform his new position as a systems analyst. He requested a transfer back to his old position, but was informed that his old job had been abolished. The plaintiff was given a clerical job comparable to his previous position. The court stated that while the plaintiff was unable to perform his new position, he was never injured doing his previous work. The court held that being fidgety and nervous are normal consequences of a bad job situation. One of the judges dissented saying that the plaintiff's inability to return to the systems analyst job was evidence of disability. Relevant cases were cited to support his contention.

In a Minnesota case, Lockwood v. Independent School District No. 877(10), the lower court awarded total temporary disability benefits to the plaintiff, Ronald Lockwood, the principal of a senior high school which experienced the fastest growth in the state. As a result of the school's fast growth, Lockwood's regular workday generally lasted until late in the evening. This caused symptoms such as stomach problems, weight loss, insomnia, and an uncontrollable temper. During the compensation hearing, the psychiatrist diagnosed Lockwood's condition as a manic depressive disorder causing him to experience alternating states of euphoria and depression. The psychiatrist admitted that the

plaintiff had a genetic problem. The Supreme Court, while admitting that mental illness caused by mental stimulus is as real as any other kind of disability, reversed the lower court's ruling stating that legislative intent was unclear in this area.

In the case of Townsend v. Maine Bureau of Public Safety(11), the Supreme Court of Maine found some support for the plaintiff's claims that the ordinary day-to-day stress of her work contributed to her disability. Instead of deciding the case in favor of Townsend, however, the Supreme Court remanded the case to the lower court. The plaintiff needed proof that: her injury was a direct result of unusual stress of being the first woman on the Maine State Police; the ordinary stress of her job was the main cause of her injury; or the injury was caused by a combination of both.

Finally, the Colorado Supreme Court gave a significant victory for workers in the case of Ronald Streeb v. the City of Boulder(12). The plaintiff, a firefighter for eleven years, died of a heart condition. His death was due mainly to a combination of stress resulting from failure to receive promotion, his supervisors' rejection of his proposals, tension from inadequate communication with superiors and his disagreement with management's department philosophy. The referee denied compensation because the mental stress did not come from an injury or occupational disease arising out of and in the course of employment. On appeal, the Supreme Court of Colorado held that stress is now recognized by medical authorities as a disease in its own right and that discretionary or optional activities that are incidents of employment may be considered as "arising out of and in the course of employment even though they don't confer a specific benefit to the employer."(13)

Classification of Stress Illness

Because of the lack of consistent court decisions in many jurisdictions in the country, it may be useful to classify the types of stress problems identified in the cases cited above. The first group is physical-mental stress, i.e., the physical stimulus causes a mental injury.(14) The Bailey case is an example of this type of problem. The plaintiff suffered physical injury, and watching his co-employee plunge to his death caused mental problems. The second classification is mental-physical stress whereby the mental stimulus causes the physical disability.(15) The Maksyn case is an example of this condition. Maksyn's forty-three years of long work hours and intense mental job pressure netted him a serious physical disability. The third group of stress problems is referred to as mental-mental, i.e., the mental stimulus results in the mental disorder.(16) The Colorado case of Ronald Streeb is an example of this type of injury. The Supreme Court held that stress (resulting from failure to receive promotion, rejections of proposals made to superiors, disagreement with management's department philosophy, etc., is a recognized disease in its own right and is compensable under Workers' Compensation.

Legal jurisprudence in this country has recognized the compensable nature of the first two situations. However, while a growing trend among state courts exists relative to the compensable nature of the mental-mental stress cases, the door is still wide open regarding denials to such cases. The reasons are two-fold: (1) While psychiatrists can reasonably ascertain the mental injury of the victim, no objective basis exists to pinpoint that the mental stimulus is the cause of the mental injury, and (2), the courts are quite concerned regarding the potential for malingering or making self-serving statements, consciously or unconsciously, to support the contention for the
injury.

The fundamental strategy appears to be that to successfully pursue a claim with mental-mental underpinnings, the injured must distinguish the job's specific environmental problems from those externally induced personal, social, and other miscellaneous problems that may be contributors to the injury. However, a widely-acclaimed authority in Workers' Compensation argues that there is no real difference between physical and mental injuries and "therefore, any jurisdiction which refuses to extend Workers' Compensation because the injury is purely mental is disregarding the intent of Workers' Compensation law without being able to support the determination on either legal or medical theory."(17) The Supreme Court of Maine underscored the same argument in the Townsend case regarding the distinction between mental and physical injury. The Court held that "this is a distinction without a difference, for under contemporary medical theory mind and body comprise a single, complex, and integrated unit."(18)

Heart Attacks

Heart attacks remain troublesome cases for courts. A number of reasons seem to complicate the situation, but three of them are significant: (1) Heart attacks are not easily identified with employment; (2) contrary to work-related injuries, heart attacks often involve pre-existing heart conditions, and (3) Medical research has no precise explanation regarding the causes of this ailment.(19) However, many jurisdictions in the country follow the "unusual exertion rule". This rule states that the employee's exertion, which caused the heart attack, must be unusual for him. This is difficult to prove. A proposed "personal risk-employee contribution test", therefore, divides the injury into two classifications: one with a pre-existing disease (risk factor) and one without pre-existing disease. To satisfy causation between

employment and heart attack under the first situation, such employment requires exertion of effort over and above non-employment life. Causation under the second situation, on the other hand, is established by any exertion which medical science identifies as cause for a heart attack.(20) Medical research has definitely identified stress-related problems as frequent causes of heart attacks. Consequently, the trend seems to be more common for courts to award benefits to heart attack victims.

Unusual Strain Doctrine

The "unusual strain test" appears to provide the primary basis for Workers' Compensation awards regarding stress-related injuries, including heart attacks, but the "cause" consideration which must be observed is that the injury must be "arising out of employment," and is a natural incident of the work. Having identified this causal relationship, the final test is whether the stress is beyond the ordinary day-to-day problems to which all employees are exposed. In a Pennsylvania case,(21) the court held that the claimant's work environment did not constitute normal working conditions. The plaintiff's boss loudly criticized him in front of his co-employees over a five-year period. While some problems may be encountered in applying the "unusual strain test", there appears to be growing unanimity among the courts to provide a liberal interpretation of Workers' Compensation laws to allow injured employees to receive benefits.

Unsettling Condition

The job-related stress cases reviewed above provide a glimpse of the unsettling conditions businesses face in dealing with stress problems in today's workplace. At the fore is a challenge against management's philosophy not only in dealing with specific employment issues, but also in its overall management of human resources. Definitely, a case by case or "brushfire" approach to managing the corporate human resources in the era of liberal compensation laws is expensive, both in terms of absolute dollars and in qualitative costs resulting from the divisive aspect of the employer-employee litigation process.(22)

In studying these cases, several points are identified which would help management formulate a response-strategy to cope with the problem. These points are discussed in the remaining sections of this paper.

Pre-employment Medical Examination

In the past, employers required their employees to go through a complete physical examination, at the company's expense, as a prerequisite to employment. However, that was when medical costs were affordable and continuous "deep-to-the-bone" cost-cutting measures were not an integral part of corporate strategy. In recent years, soaring medical costs forced employers to alter their employment policies to minimize this cost. Consequently, new employees are allowed to start work without the benefit of thorough physical examinations.

Unfortunately, companies will find that dropping physical examinations as a pre-employment requirement may be unnecessarily risky and, perhaps, expensive in the long-run. The risk relates to the predisposition of the individual to certain conditions which, if aggravated, may result in physical injury. This risk includes heart conditions which work exertion, for instance, may aggravate or accelerate resulting in a heart attack. In an Iowa case, the court awarded compensation to an electrician who had to run up and down stairs to correct an electrical problem. The court found that the work exertion aggravated his existing heart condition which caused the heart attack.(23) The Iowa court, in a subsequent case, commented openly regarding the basis for its decision. It said, "When an employee is hired, the employer takes him subject to any active or dormant health impairments incurred prior to his employment."(24) Evidently, this ruling is influencing the courts in various parts of the country. The significance of these rulings suggest that companies may be well-advised to bring back the pre-employment physical examination requirements. Considering the threat of various serious illnesses today, perhaps these requirements must be more rigid than in the past. This may create a difficult situation for management. How far can it extend this pre-employment requirement to uncover certain predispositions without invading the prospective employee's private life? Would it be appropriate, for instance, for an employer to look into certain aspects of the prospective employee's medical history, particularly those with respect to ailments or disorders requiring psychiatric treatment? Would it be appropriate to require prospective employees to submit to psychiatric examinations to discover personality disorders (manic depressive or schizophrenic-type disorders) as a precondition to employment? Answers to these questions may involve legal as well as ethical dilemmas. In public life, for example, revelations of psychiatric consultation or treatment have caused past political candidates to withdraw from important races.

"Normal Stress Doctrine", Job Description and Proper Matching of Skills

Normally, the right granted to a worker or an employee under Workers' Compensation is the right to a safe workplace which does not endanger or damage "the structure of the body". The safe workplace criterion has been broadened by virtue of the compensable nature of injuries arising from mental stimuli, to include the qualitative aspects of the workplace and perceived dangers or problems within the environment. Moreover,

to measure the safety of the workplace resulting from the impact of these qualitative considerations, the courts have adopted a "normal working condition" or "normal day-to-day stress and tension" test which all workers usually experience. The latter test made it possible for a bus driver to recover compensation for mental breakdown arising from transfers, demotions and changes in job duties. Compensation was also awarded to an employee who claimed mental disability after lay-off; a nurse who suffered mental problems upon being asked to resign from her job; a shoe salesman who claimed nervous breakdown after a job transfer, reduction in pay and pressures from a supervisor; and a male librarian whose physical problems had been aggravated due to stress arising from criticism of his work and poorly defined job responsibilities. Similar awards were given to a deputy sheriff who suffered mental depression due to his belief that his supervisor was out to get him and to a worker who believed that further exposure to chemicals in a refinery would result in contracting cancer.

Indeed, the significance of these cases is far-reaching to employers, not only because it affects their routine operating decisions, but also because it involves the subjectivity of the basis of the injury. Some courts even argue that mental disability is, in essence, in the head of the claimant and therefore, compensability is not affected if the injury is all in the head.(25) However, there are some strategies that employers can initiate to mitigate the impact of these court decisions. First, employers should be aware of the stress levels of each job, either individually or as a group, in order to place them within the purview of the "normal stress doctrine". Second, careful matching of qualifications and skills must be observed when hiring new employees. This requirement is important not only because it is mutually beneficial to both employee and employer, but also because in certain jurisdictions the court interpreted "normal stress" as normal to the individual rather than normal to the job. While this individual orientation of "normal stress doctrine" is not widespread at this point, the probability of courts adopting it across the country exists as a result of the traditional belief that Workers' Compensation laws must be liberally interpreted in favor of the workers. Third, employers can reduce the traumatic impact of demotions, lay-offs, terminations or transfers by providing assistance such as retraining, helping the employee acquire new or additional skills, assisting the employee in finding another job, providing monetary help to defray moving costs, offering generous severance pay, and other means of employee assistance.

Changes in Job Description

In the previous section, we discussed the need to properly match skills and qualifications with the specific requirements of the job in order to comply with the "normal stress doctrine" exemplified by the courts. A number of variables can obviously alter the balance between matching skills and job requirements. Some of these variables might include additional responsibilities, consolidation of duties (particularly as a result of cost-cutting strategies during economic downturn), or promotion to higher responsibilities (perhaps, in accordance with the "promotion from within" policy of many organizations). Altering the balance, unfortunately, may increase the stress level beyond the normal level of the original position. A Pennsylvania case exemplifies this point. A sheet metal worker of fifteen years was promoted to estimator. The estimator's position required supervising other employees, making estimates for customers, doing office, work, billing clients and doing other paperwork. Although there was no pressure from top management to do more work, the claimant was not personally satisfied with his performance and spent extra hours on the job. Subsequently, the worker was declared disabled and the treating psychologist concluded that the changes in work duties caused the mental disability.(26) The referee granted compensation to the claimant, but was reversed by the Workers' Compensation Appeals Board, only to be reversed by the Supreme Court which noted that promotion to a greater responsibility was evidence of "unusual and abnormal work conditions". Commentators on this case did not agree with the decision, arguing that the court seemed to equate "normal working conditions" with a "never changing" working environment. According to dissenters, the ruling will harm the workers more than the employers because the former will not have the opportunity to improve themselves.(27)

A closer look at this ruling indicates that the wisdom of the court is not unreasonable altogether. The court did not take away opportunities from employees to improve themselves by assuming higher responsibilities or discouraging employers to promote from within. Simply, the ruling requires a proper matching of skills and qualifications because in the long run neither the employee nor the employer is benefited by a mismatch of capabilities.

In another case, a bus driver filed a claim under Workers' Compensation job duties resulting from transfers and demotions. The Supreme Court of Wyoming held that the injury was compensable because the resulting stress from the situation was of greater magnitude than that of the mental stress and tensions which all employees usually experience.(28)

Performance Reviews and Constructive Criticisms

Most, if not all, supervisors must review the performance of subordinates at intervals during the year. The review is intended to provide an overall appraisal of the employee's performance, point out areas needing

improvement, and suggest ways to achieve such improvement. In essence, the review process is conducted under the "constructive criticism" approach. This approach essentially identifies the weak and strong points of the subordinate. Even the most well-intentioned person-to-person discussion, however, may produce a negative employee reaction. What if this encounter would result in a nervous breakdown, aggravate a certain illness, or stimulate other mental disorders in the employee? Unfortunately, the court may consider the mental disorders as injury compensable under Workers' Compensation because of the sudden change in the environment, at least from the standpoint of the employee. In other words, the stress level from the employee's standpoint is no longer normal, and is perhaps far above the stress and tension level which all other employees experience every day. A California case underscored the test of "normal to the employee". The case involved an older legal secretary who could not handle the teasing of a young attorney or the load of a busy law firm. One day she became numb, dizzy, and could not speak clearly. The Appeals Court of California ruled in favor of the employee, holding that the main consideration is not the actual work environment; rather, how the employee reacts to it (Emphasis added).(29)

The significance of these cases is as important as it may seem silly. Teasing and harassment, in fact, may have vague boundaries under our present laws. The main point of emphasis, however, is that supervisors responsible for reviewing performance of subordinates should go through appropriate training in order to encourage and not discourage the subordinates. Perhaps such training was not important in the past, but it is definitely necessary under our current intense concern and respect for individual rights.

Lack of Clearly Defined Responsibilities

Any time top management employs the services of consultants to look into specific problems either at the departmental level or the organizational level, comments such as "lack of clearly defined responsibilities" are not uncommon. In fact, some companies employ "floating secretaries" or "floating staff" to describe certain employees who basically take on odd jobs or work which do not fall into anyone's responsibility. Unfortunately, this arrangement is traumatic to certain individuals because of the uncertainty and the difficulty of planning and anticipating the requirements of a day's work. In recent years, however, the courts are forcing employers to make up their minds relative to this "floating help". The courts throughout the country are holding employers liable, through Workers' Compensation, for mental disorders connected with this type of working arrangement.

A Long-Term Strategy

The cost significance of work-related stresses is becoming a serious concern for many organizations today. Normally, the amount involved increases dramatically if the stress problem is litigated in court under Workers' Compensation Laws. We recommend, therefore that organizations adopt a long-term strategy to control it and to impress upon the courts in actual litigation that top management is undertaking positive measures to remedy the situation. Here are some ideas.

(1) A total approach to managing stress in the organization - Stress problems in our society will never go away and uncoordinated and fragmented solutions will never contain them. Amazingly, a tremendous portion of our waking hours are spent in the office, at home, or elsewhere dealing with work matters. In essence, the courts are just reiterating the employer's responsibility to share in solving the various life traumas to which the corporate organization significantly contributes. Compensation awards for mental disorders, which are normally larger than compensation for physical injuries, are therefore the employer's cost of traumatic conditions in the workplace (regardless of whether they are work-created or created by the employee, or both).

To control (or at least minimize) this cost, employers have to internalize it so that the costs can be managed and subjected to appropriate management controls. The responsibility would naturally fall into the hands of the human resource manager who must institute an effective strategy to manage the problem on a long-term basis.

(2) A total approach to helping employees cope with personal and job-related stresses - An effective strategy for managing stress in the organization should include a similar approach to helping employees cope with personal and job-related stresses. This includes better medical programs for employees and dependents, health counseling, improved health facilities, and various other health-related programs. Finally, employers must be sensitive to the needs of women. Women are becoming significant members of the work force. They seek self-fulfillment as they try to balance the demands of career, home management, parenting and income earner. For instance, company supported day care centers reduce the amount of pressure for working mothers who have to pick up the child, and then rush home to prepare dinner for the family.

(3) Toward a Quality of Life Index (QLI) Certain authors propose a "legal stress audit" to identify the legal exposure arising from Workers' Compensation cases in order to formulate strategies and to impress the courts that the company is aware of the problem and appropriate measures have been undertaken to correct it.(30). While the usefulness of a "legal stress audit" is

evident, we prefer a non-legalistic, broader approach to reducing and monitoring stresses in the workplace. We believe that the development of a "quality of life index (QLI)" in the organization takes on the legal aspects of the problem as well as initiating a long-term strategy to contain job-related stresses. QLI can be developed by using a diagnostic instrument (particularly opinion surveys of employees) to measure the stress level of key jobs and eventually each job in the organization. Such diagnostic instruments are available from consulting firms and the research arms of academic institutions across the country. They can be tailored to fit individual requirements.(31) Perfection is not the goal of QLI, particularly at the start, and it may take several years to come up with a reasonably accurate measure of stress level for each job, but to be on the learning curve is a judicious goal to strive for at the onset.

(4) Continuous Monitoring of QLI - Once the index is developed, continuous monitoring of the organization's stress level is needed to keep the index representative of the true condition in each job. The diagnostic instrument explained above, with appropriate revisions or changes, can be used for this purpose and should be employed as often as necessary.

(5) Avoid Legal Skirmishes with Employees - We do not suggest that the organization should not stand its ground or oppose abusive conduct, rather, the idea is to avoid legal battles with employees. The legal arena is not only divisive but also extremely favorable to employees. In many instances, the absolute dollar cost of litigation against employees may not be significant; but the total cost can be staggering if it includes low productivity due to morale problems within the organization (such as animosity) or expenditures to counter bad publicity.

(6) Use the Strategy to Company's Advantage - The total approach (or QLI) should be used to promote the overall goals of the organization. As a first step, top management should support it. It must be communicated to all employees, preferably as part of their benefits package. Similarly, in recruiting new employees, this portion of the benefit package must be high lighted. Because of the present level of awareness regarding health concerns, QLI may well be an excellent recruiting tool for the organization. Consequently, the human resource manager should strive to make this index as accurate as possible.

A Serious Problem?

Certain estimates indicate that 15% to 30% of our population is afflicted with some type of mental disorder. Moreover, claims arising from this problem are higher among younger workers and particularly among women.(32) A study conducted by the National Council on Compensation Insurance indicates that claims based on mental disorders account for about eleven percent of all claims arising from occupational diseases, and that the awards granted by the courts are relatively larger than those given to claims for physical injury.(33)

Considering these statistics, job-related stresses have the potential of becoming a serious problem in terms of the impact on the workplace and on the bottom line of corporate financial reports. While observers are not reaching for the "panic button" yet, a "red alert" needs to be raised to warn against another crisis similar to the liability insurance problem that recently gripped the business community. Finally, we suggest that, considering the present concern for health problems, organizations with excellent health-related programs will have an advantage in attracting qualified workers in a shrinking manpower market.

Suggestions for Future Research

We offer two suggestions. The first is an examination of subsequent Workers' Compensation awards. In particular, future research should focus on the continuing development of the "unusual strain test" in allowing injured employees to receive benefits. The second opportunity for additional research is to survey companies to ascertain the extent to which management has dealt with job-related stress up front. Has management implemented a "legal stress audit" and developed a "quality of life index" to minimize the exposure to job-related stress injuries.

*****Endnotes*****

1. Lublin, Joann S., "On-the-Job Stress Leads Many Workers to File - and Win - Compensation Awards", *The Wall Street Journal*, Sept. 17, 1980, p. 26.
2. American General Insurance Co. vs. Bailey, 268 S.W. 2d(528) Tex., Civ. App. 1955.
3. Carter v. General Motors Corporation, 361, Michigan 577, 106 N.W. 2d 105 (1960).
4. Diana Wolfe v. Sibley, Lindsay Curr Co., 36 N. Y. 2d. 505 (1975).
5. Alcorn v. Arbo Engineering, Inc., L.A. 29683, California, 1970.
6. Ibid.
7. Transportation Insurance Co. v. Maksyn, 580 S.W. 334. Texas. 1979
8. Ibid.
9. LaBuda v. Chrysler Corporation, 61 Mich App 250, 1975.
10. Lockwood v. Independent School District No. 877, 312 N.W. 2nd 924 (Minn. 1981).
11. Townsend v. Maine Bureau of Public Safety, ME, 404 A. 2d 1014.
12. City of Boulder v. Streeb, Sept. 20, 1985, 706 P. 2d

786.
13. *ABA Journal*, (February 1, 1986), p. 90.
14. Wolz, Monte R., "Workers' Compensation-Job-Related Stress," *Hamline Law Review*, Vol. 5, (June 1982), p. 440
15. Ibid.
16. Ibid.
17. Larson, Arthur, *Workmen's Compensation Law*, 1987.
18. Townsend v. Maine Bureau of Public Safety, op. cit.
19. Downey, Storrs, "Workmen's Compensation for Heart Attacks in Iowa and its Bordering States," *Duke Law Review*, Vol. 30, 1980-81, p. 873.
20. Larson, *Workmen's Compensation Law*, 1987, op. cit.
21. McDonough v. Workmen's Compensation Appeal Board, Pa Commw., A.2d 1099 (1984).
22. The cost of litigating Workers' Compensation issues is enormous. One local company indicated that every time a Workers' Compensation case is filed against the company, the insurer requires a deposit of $20,000. Another local company stated that the deposit requirement ranges from $20,000 to $250,000, depending on the nature of the claim.
23. Guyon v. Swift & Co., 229 Iowa 625, 295 N.W. 185 (1940).
24. Ziegler v. United States Gypsum Co., 252 Iowa 613, 106 N.W. 2d 591 (1960).
25. DeCarlo, Donald T., "Compensating Stress in the '80s." *Insurance Counsel Journal*. (October 1985), p. 684.
26. 73 Pa. Commonwealth, 475 A. 2d 959 (1984).
27. Mills, Edward J., "Mental Stimulus Causing Mental Disability: Compensability Under the Pennsylvania Workmen's Compensation Act," *Duquesne Law Review*, 23, 375, 1985, pp. 390-91.
28. Consolidated Freightways v. Drake, 678 P 2d 874 (Wyoming 1984).
29. Lublin, op. cit.
30. Ivanavich, John M., Michael T. Matteson and Edward P. Richards III, "Who's Liable for Stress on the Job?" *Harvard Business Review*, (March-April, 1985), p. 70
31. For example, these authors used a questionnaire on job-related stresses and strains (developed by the Institute of Social Research, University of Michigan) to measure the stress level of management accountants and internal auditors. (See, for instance, "Internal Auditing: Less Stress - More Satisfaction", *Internal Auditing*, Summer, 1987, pp. 12-18. A similar questionnaire was used by James Gaertner and John Ruhe in studying the stress level of public accountants [*Journal of Accountancy*, June 1981, pp. 68-74]).
32. DeCarlo, op. cit.
33. Ibid., p. 682.