

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**2003 MTWCC 59**

**WCC No. 2003-0739**

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**BILL BURGAN**

**Petitioner**

**vs.**

**LIBERTY NORTHWEST INSURANCE COMPANY**

**Respondent/Insurer.**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

**Summary:** Factory maintenance worker with preexisting history of post-traumatic stress disorder was exposed to gas at work, which caused an immediate though temporary headache and bad taste in his mouth. He was also immediately angry and distraught. His reaction was exacerbated by a meeting at work which claimant interpreted as suggesting a cover-up by the employer. Six days after the incident, he was ordered into psychiatric hospitalization based on one of his treating psychiatrist's concern for the safety of claimant and others. Claimant never returned to work due to his treating doctors' opinions that his mental state would deteriorate on returning to work. The parties sought adjudication of whether claimant's condition is an injury compensable by the Workers' Compensation Act.

**Held:** Claimant presented no objective medical findings of an injury as required by section 39-71-119(1)(a), MCA (2001). The Court is persuaded that claimant's disabling mental condition resulted from his psychological reaction to the incident and was not a consequence of a physical injury. Under section 39-71-119, MCA (2001), and *Yarborough v. MMIA*, 282 Mont. 475, 938 P.2d 679 (1997), claimant's condition is a mental-mental condition not compensable under the Workers' Compensation Act.

**Topics:**

**Constitutions, Statutes, Regulations, and Rules: section 39-71-119, MCA (2001).** Although claimant had a headache and bad taste in his mouth following exposure to gas, he presented no objective medical findings of a physical injury as required under section 39-71-119(1)(a), MCA (2001). The Court is persuaded that claimant's disabling mental condition resulted from his psychological reaction to the work incident. Under section 39-71-119, MCA (2001), and *Yarborough v. MMIA*, 282 Mont. 475, 938 P.2d 679

(1997), claimant's condition is a mental-mental condition not compensable under the Workers' Compensation Act.

**Injury and Accident: Mental or Psychological Stress.** Although claimant had a headache and bad taste in his mouth following exposure to gas, he presented no objective medical findings of a physical injury as required under section 39-71-119(1)(a), MCA (2001). The Court is persuaded that claimant's disabling mental condition resulted from his psychological reaction to the work incident. Under section 39-71-119, MCA (2001), and *Yarborough v. MMIA*, 282 Mont. 475, 938 P.2d 679 (1997), claimant's condition is a mental-mental condition not compensable under the Workers' Compensation Act.

¶1 Petitioner, Bill Burgan (claimant), and respondent, Liberty Northwest Insurance Company (Liberty), agreed to submit this matter on depositions, exhibits, and written arguments. Claimant is represented by Mr. Patrick R. Sheehy. Liberty is represented by Mr. Michael P. Heringer.

¶2 Exhibits: Exhibits 1 through 16 were admitted by stipulation. Exhibit 17, referenced in the Exhibit Grid prepared by the parties as "Hartford disability policy documents," was not included in the exhibits delivered to the Court.

¶3 Depositions: The Court received and considered the depositions of claimant, Scott K. Ross, M.D., Simon Wall, M.D., and Joseph McElhinny, Psy.D. The Court also received and considered the exhibits to depositions.

¶4 Issue Presented: Claimant is seeking disability and medical benefits for mental conditions (primarily post-traumatic stress disorder, abbreviated PTSD) which he alleges were aggravated by his May 16, 2002 exposure to hydrogen sulfide (H<sub>2</sub>S) while working at the Laurel, Montana, Cenex Refinery. As phrased by the claimant in his Petitioner's Proposed Findings of Fact, Conclusions of Law and Judgment, the issues presented for decision are:

Was Petitioner's pre-existing post-traumatic stress syndrome [PTSD] aggravated by the hydrogen sulfide exposure he experienced at work on May 16, 2002?

If his PTSD was aggravated, was the aggravation an injury as defined by § 39-71-119(3), MCA?

(Petitioner's Proposed Findings of Fact, Conclusions of Law and Judgment at 1-2.) The second issue is the critical issue.

¶5 Having considered the Pretrial Order, the deposition testimony, the exhibits, and the arguments of the parties, the Court makes the following:

#### FINDINGS OF FACT

¶16 Claimant is a Vietnam war veteran. He served in the Navy in 1969 and 1970. Following his military service he was diagnosed as suffering from PTSD related to his service.

¶17 Claimant began working in the Cenex Refinery in Laurel, Montana, in March 1974. (Burgan Dep. at 11.)

#### July 13, 2000 Incident and Sequella

¶18 On July 13, 2000, claimant "was involved in a verbal confrontation with another employee where threats to his personal well being were made." (Ex. 11.) Following that incident the claimant experienced extreme anger to the point that he feared he would become violent if confronted by the other employee. (Ex. 3 at 64 *and see Id.* at 128.) He took medical leave and saw his family physician. (See Ex. 3 at 128.) His family physician referred him to Dr. John C. Andre, a psychologist for evaluation and treatment. (*Id.*)

¶19 Dr. Andre saw claimant on July 18, 2000, and recorded "Dr. Grewell's office sent him to our clinic today because of the extreme difficulty he is having adjusting to an altercation with a co-worker last week." (*Id.*) While claimant had not previously been treated for PTSD, Dr. Andre found evidence indicating probable PTSD due to claimant's Vietnam experience. He made the diagnosis based on the history related to him by claimant.

. . . Since this altercation, Mr. Burgan claimed he has had a replaying of "the old tapes" from his post Vietnam drinking and drugging days. He claimed that he has not had any significant aggressive incidents in the last 15 years since he became sober from drugs and alcohol, but added that he fears that this event may push him back into that frame of mind. So far, he has not acted out in response to his angry impulses . . . [and] it was quite clear to this clinician that Mr. Burgan wants to avoid a violent altercation at all costs, but nonetheless, he is worried about what may happen . . . .

While time did not allow for a comprehensive assessment of symptoms of posttraumatic stress disorder, it is probable that Mr. Burgan's current difficulties are related to his exposure to trauma while serving in Vietnam in the late 1960's. He does exhibit an extraordinary amount of anger that has been dormant for the last several years. . . . In general, he appears to avoid circumstances that put him in risk of losing his temper due to his belief that his Vietnam experience has left him capable of extreme violence toward others. . . .

(*Id.* at 128-29.) Dr. Andre also diagnosed "Adjustment Disorder, not otherwise specified." (*Id.* at 130.) He referred him to Dr. Simon G. Wall, a psychiatrist, for possible medication, and scheduled further psychotherapy. (*Id.* at 131.)

¶110 Dr. Wall saw claimant on July 20, 2000. Dr. Wall prescribed Paxil and Elavil. (*Id.* at 25.) Paxil is an antidepressant of the serotonin reuptake inhibitor type. Elavil is a tricyclic

antidepressant. Dr. Wall thereafter continued to see claimant and prescribed these medications until August 28, 2001, when he substituted Zoloft for the Paxil. (*Id.* At 12-24.)

¶11 Claimant thereafter participated in psychotherapy sessions with Dr. Andre, during which he discussed the impact of his Vietnam service on his life. (*Id.* at 120-26.) The psychotherapy was helpful and on September 28, 2000, Dr. Andre determined that claimant was able to return to work. (*Id.* at 115; Ex. 7 at 3.) Claimant worked part time for approximately two weeks and then returned to work on a full-time basis. (Ex. 3 at 113.) He continued to see Dr. Andre periodically until March 5, 2001. (*Id.* at 109-112.) Over the next year and a half the claimant also continued to see Dr. Wall for his antidepressants. (*Id.* at 12-20.)

#### Incident of May 16, 2002

¶12 On May 16, 2002, claimant was exposed to what he believed was hydrogen sulfide gas while working at the refinery. He testified he was "immediately overcome" by the gas and could "taste it." (Burgan Dep. at 20-22.) He immediately left the area. (*Id.* at 20.)

¶13 Following the incident, claimant felt "scrambled," meaning he was not thinking clearly and was disoriented. (*Id.* at 24.) A bad taste remained in his mouth and he had an upset stomach. (*Id.* at 33.) He also had a headache, which lasted at least the rest of the day. (*Id.* at 33-34.)

¶14 Claimant reported the incident to his Cenex's Safety Supervisor. (*Id.* at 32 *and see* Ex. 1.) He filled out and signed an incident report. (Ex. 4.) Regarding the part of his body affected, claimant wrote: "Lungs head." (*Id.*) He wrote that he had a bad taste in his mouth and an "instant" headache. (*Id.*) He left work early. (Burgan Dep. at 44; Ex. 9 at 1.)

¶15 Claimant did not seek medical care following the incident but did contact Dr. Andre, because of his anger over the incident. Dr. Andre saw claimant the afternoon of May 16<sup>th</sup>, and recorded:

First contact with Patient in over a year. He called in this morning following an incident this morning at the refinery. He had been working with another worker when he was exposed to a venting of potentially lethal chemicals. He claimed that he had at least three inhalations of the toxins before he was able to remove himself from the area. He denied that the incident had frightened him, claiming instead that **he experienced an immediate sense of anger at the fact that he had been needlessly endangered.** He stated that the incident was the result of carelessness on the part of management, as the plant is under some significant pressure to restore itself to full production following an extensive overhaul. He has filed an incident report, and spoke about the potential fallout from this decision. He has been in enough incidents in the company to recognize that the company covers up things like this because of the financial implications involved. **We spoke about the relationship between Patient's rage this morning and his history in Vietnam. He**

**admitted that he did flash back to some of the events of his past.** Patient noted that since our last contact, he has sought out and was granted a 30% service connected rating on his PTSD and Agent Orange exposure. He clearly continues to struggle with his past and has a rather brittle hold on his control in the present, as evidenced by today's decompensation. He appears to have benefitted quite a bit from the opportunity to talk today, and indicated that he will come back if he feels the need next week. He remains on Zoloft and amitriptyline, and noted that these medications are very important elements in his recovery. [Emphasis added.]

(Ex. 3 at 34.) Notably absent in Dr. Andre's notes is any report of physical complaints or symptoms by claimant.

¶16 Claimant worked the day after the incident, a Friday, but testified he did not work the next Monday because he was not feeling well. (Burgan Dep. at 57- 59; Burgan Dep. Ex. 10.) He worked Tuesday. (Burgan Dep. Ex. 10.)

¶17 On Wednesday, May 22<sup>nd</sup>, claimant reported to work and participated in a meeting with union representatives and "management guys." (Burgan Dep. at 60-61.) Claimant believed a coverup was taking place. (*Id.* at 40.) He testified: "I got the impression that they -- I mean, they obviously didn't care whether they gassed me or not." (*Id.* at 36.) Claimant became upset and angry. (*Id.* at 68.) He left the meeting and made an emergency appointment with Dr. Wall. (*Id.* at 65.) Claimant did not return to work thereafter.

¶18 Dr. Wall saw claimant at 2:20 p.m. that afternoon. He described claimant's mental state as follows:

Affect was angry and tearful. Thought processes were somewhat tangential, meaning that he didn't sort of take a line of thought and follow it in a logical fashion. He would sort of leap from one thing to another. No insight. Suicidality, see note. Homicidality, see note. Cognition, was confused. He wasn't thinking terribly clearly. And at that time I had him go to the emergency room with Michelle, who was a nurse who was working for us at that time, because I felt that he needed to be admitted to the hospital.

(Wall Dep. at 36.) Dr. Wall had claimant admitted to the psychiatric unit of the hospital because claimant had "pretty significant suicidal ideation," and "a lot of difficulty coping with the stress of the exposure, and he just wasn't thinking clearly." (*Id.* at 37.) Dr. Wall did not physically examine claimant.

¶19 Upon arrival at the hospital an emergency room doctor requested that claimant be examined by Dr. Scott K. Ross, a specialist in occupational medicine, apparently on account of the claimant's report of exposure to H<sub>2</sub>S. (Ex. 3 at 58-59.) The ER report indicates that claimant reported confusion following his exposure but that the confusion had "not persisted." (*Id.* at 58.) As to his physical status, the report reflects, "He has had no nausea, vomiting, fever or chills. He describes a dryness in his throat and nose." (*Id.*)

¶20 Dr. Ross examined claimant on May 22<sup>nd</sup> to determine whether claimant had suffered any physical injury as a result of exposure to hydrogen sulfide or any other gas. (Ross Dep. at 10; Ross Dep. Ex. 3a; Ex. 3.) He took a history from claimant, examined him, and consulted a software system known as Micromedex, which contains detailed data about reactions to toxins and drugs. Since he did not have confirmation that claimant had in fact been exposed to hydrogen sulfide, he considered possible exposure to other gasses. (Ross Dep. at 11-12.)

¶21 By way of history, claimant told Dr. Ross he had an instant headache and an unusual acidic taste in his mouth when exposed to what he believed was H<sub>2</sub>S, and also had difficulty speaking and felt "totally scrambled." (*Id.* at 16.) Claimant also described "some difficulties with his short-term memory. . . . like he was losing track," a thick feeling of his tongue, and "a feeling of fullness in his lungs, but he didn't have any problems breathing, no shortness of breath, wheezing, or cough" which are typical of exposures to H<sub>2</sub>S and other gases. (*Id.* at 18; Ross Dep. Ex. 3a at 3.) Claimant also denied episodes of nausea, vomiting, muscle cramps or weakness, which are also associated with exposure to hydrogen sulfide gas. (Ross Dep. Ex. 3a at 4.)

¶22 Blood tests which can indicate hydrogen sulfide exposure showed "a completely normal blood count with a normal differential." (Ross Dep. at 29-30.) Based on his essentially normal exam, Dr. Ross concluded claimant was not suffering any physical effects from an exposure to gas. Dr. Ross also considered claimant's confusion and other mental symptoms but concluded that they did not suggest a neurologic injury of any kind. (*Id.* at 20, 32-35.) He placed no physical restrictions on claimant. (*Id.* at 35.)

¶23 Claimant was discharged from the hospital on May 24<sup>th</sup>. On discharge, claimant was described by Dr. Robert W. McDermott as "doing reasonably well," benefitting from a prescription of Neurontin "in terms of anti-anxiety, anti-panic agent." (Ex. 3 at 42.) Dr. McDermott believed claimant had suffered from a "mild psychosis" on admission. (*Id.* at 40.) Discharge diagnoses were: "1. Depression, not otherwise specified with psychotic features. 2. Posttraumatic [sic] stress disorder. 3. Work related problems." (*Id.* at 38.) Dr. McDermott referenced no physical problems other than a "continuing intermittent headache," and expressed no opinion on the cause of the headache. (*Id.* at 37.) Claimant was referred back to Dr. Wall for ongoing treatment. (*Id.*)

¶24 Since his hospitalization the claimant has received ongoing treatment from Dr. Andre, Dr. Wall, and "a couple of VA doctors" whose names he did not recall. (Burgan Dep. at 47.)

¶25 On July 11, 2002, Dr. Wall wrote a letter to the Veterans Administration, which included: "In my opinion, [claimant] has been incapable of engaging in any competitive employment on a regular basis **due to his mental illness**. He has had significant difficulties in coping with work stresses. Typically these kind of stresses cause him to react in a very emotional and unpredictable manner, due to his past and ongoing difficulties with

PTSD." (Wall Dep. at 46, emphasis added.) Dr. Wall also believed claimant was in danger of hurting himself or others if employed. (*Id.*)

¶26 Dr. Wall testified that the mental stress of the hydrogen sulfide exposure and the ensuing events, not any physical injury, aggravated claimant's PTSD. (*Id.* at 65-66.) He found it significant that claimant decompensated more after the May 22<sup>nd</sup> meeting at Cenex than after the exposure itself. (*Id.* at 55.) He explained that claimant's stress came from his fear that he would harm someone, noting that claimant had been trained to kill in Vietnam and feared that stressors following the exposure would lead him to violence. (*Id.* at 56-57.)

¶27 On October 25, 2002, claimant was evaluated by Dr. Joseph K. McElhinny, a clinical psychologist, at the request of the insurer. (McElhinny Dep. at 4; Ex. 3 at 45.) Dr. McElhinny characterized claimant as:

extremely angry, hostile, had high levels of anxiety. His speech was rapid. He was disoriented cognitively. His thoughts were racing. He seemed to be paranoid. His ability to engage in abstract thinking was poor. And he kept referring to himself as a dangerous and violent person. Not a person that I wanted to spend any extra time with.

(McElhinny Dep. at 6.) Dr. McElhinny noted claimant "had a lot of violent thoughts on his mind regarding his employers and supervisors." (*Id.* at 8.)

¶28 Based on his interview of claimant, Dr. McElhinny diagnosed "intermittent explosive disorder." (*Id.* at 17.) Based on the history provided by claimant he also suspected PTSD but did not attribute the PTSD to the H<sub>2</sub>S exposure "[b]ecause he didn't fear going back to work because of hydrogen sulfide, he feared going back to work because of potential humiliation and being aggravated by the people at work." (*Id.* at 15.) Dr. McElhinny did not think claimant was capable of working at the time he saw him. (*Id.* at 19.)

¶29 Dr. William B. Stratford reviewed records regarding claimant at the request of the insurer. (Ex. 3 at 49-52.) He opined that claimant's "mental distress was probably temporarily aggravated because of his rather abbreviated apparent physical exposure and response to the gas and his emotional reaction, either to the hydrogen sulfide gas or to the work place in general." (*Id.* at 52.)

¶30 Claimant testified there is nothing from a physical standpoint preventing him from performing his work at Cenex. (Burgan Dep. at 71.) Even the symptoms he had at the time of the incident -- the taste he had in his mouth and feeling in his lungs -- were not things that would have prevented him from working. (*Id.* at 82-84.) As to his headaches, they tapered off while he was hospitalized and have disappeared. (*Id.* at 84.) Claimant concedes he has not gone back to work due to his fear - fear that "if I get in an incident or anything, there will be a bad outcome. They will use the ability that they know that I'm under psychiatric care -- they will use that as a means of disposing of me." (*Id.* at 71.) He believed Cenex would, "Fire me, or they will get me jacked up and I'll be in an incident. And it's an

unsafe place, and I don't feel like I can trust their judgment on how they -- you know, how they do things." (*Id.* at 72.)

¶131 When asked if he still felt "scrambled," claimant testified: "Well, if scrambled means mental or paranoid or fearful of those things, I have those things today. I fear that I would jeopardize my family with an incident, whether it's management or somebody jeopardizing my life, or doing something stupid and me getting in their face." (*Id.* at 84.)

#### Denial of Claim

¶132 Liberty has denied liability for claimant's disability on the basis that any injury was due to mental stress and is non-compensable.

#### Resolution

¶133 The evidence submitted to the Court demonstrates that claimant was exposed to H<sub>2</sub>S or some other gas and that he suffered minor physical symptoms not requiring medical care. His physical symptoms included a bad taste in his mouth, headaches, an upset stomach, and a feeling of fullness in his lungs. Claimant conceded none of these physical symptoms was disabling; they have subsided in any event. It is therefore apparent, and I find, that claimant did not suffer any disabling physical condition.

¶134 On the other hand, claimant's May 16, 2002 work exposure to H<sub>2</sub>S or some other gas caused him severe mental stress and led to other events which contributed to that stress, culminating in a disabling mental condition. The disabling condition is not a consequence of any physical injury the claimant suffered, rather it is a consequence of his psychological reaction to the exposure and claimant's subsequent interaction with the management of Cenex.

#### CONCLUSIONS OF LAW

¶135 This case is governed by the 2001 version of the Montana Workers' Compensation Act since that was the law in effect on the date of the May 16, 2002 incident. *Buckman v. Montana Deaconess Hospital*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶136 Claimant bears the burden of proving by a preponderance of the evidence that he is entitled to benefits. *Ricks v. Teslow Consolidated*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wicken Bros. Construction Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

¶137 Section 39-71-119, MCA (2001), defines injury and accident as follows:

**39-71-119. Injury and accident defined.** (1) "Injury" or "injured" means:

**(a) internal or external physical harm to the body that is established by objective medical findings;**

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(c) death.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

**(3) "Injury" or "injured" does not mean a physical or mental condition arising from:**

**(a) emotional or mental stress; or**

**(b) a nonphysical stimulus or activity.**

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical condition in relation to other factors contributing to the physical condition.

(b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of medical certainty, is responsible for more than 50% of the physical condition. [Emphasis added.]

¶138 Initially, the claim in this case fails because there is no evidence of any objective medical findings of internal or external physical harm. § 39-71-119(1)(a), MCA (2001). Claimant never sought medical care for any physical harm. His physical complaints were minor and subjective.

¶139 The claim is also not compensable because the disability and injury for which compensation is sought is a mental condition arising from emotional and mental stress. This case is indistinguishable from *Yarborough v. MMIA*, 282 Mont. 475, 938 P.2d 679 (1997). There, a firefighter approaching a burning residence was hit by an exploding "fireball," which caused him first and second degree burns on his face and hands. He resumed his work after a recovery period, but was subsequently diagnosed with PTSD resulting from the incident. *Id.*, 282 Mont. at 476-477. On appeal from a denial of benefits by this Court, the Supreme Court held:

Yarborough's PTSD arose from emotional or mental stress, and, therefore, that Yarborough's PTSD was not a compensable injury as defined by § 39-71-119, MCA (1987).

Although Yarborough did suffer burns to his face and hands, no medical expert testified that Yarborough's PTSD directly resulted from those physical injuries. Rather, the medical testimony linked Yarborough's PTSD only to the house-fire explosion itself. Consequently, just as in *Stratemeyer II*<sup>(1)</sup> and *Kleinhesselink*<sup>(2)</sup>, Yarborough's PTSD resulted from emotional or mental stress, and, therefore is a "mental-mental" injury, excluded from the definition of injury as set forth under § 39-71-119, MCA (1987).

*Yarborough*, 282 Mont. at 482-83.

¶40 Here, as noted above, I am persuaded that claimant's condition following the May 16<sup>th</sup> incident was not attributable to any physical injury but rather was triggered by the emotional stress caused by the incident and subsequent interaction with his employer. His condition thus falls within the "mental-mental" category articulated by the Montana Supreme Court. It is not compensable.

#### Costs and Attorney's Fees

¶41 In his petition, claimant requests costs and attorney's fees. Both requests are denied.

¶42 When a claim for compensation has been denied by the insurer, as here, authority to award costs and attorney's fees rests on section 39-71-611, MCA (2001), which provides:

**39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable.** (1) The insurer shall pay reasonable costs and attorney fees as established by the workers' compensation court if:

(a) the insurer denies liability for a claim for compensation or terminates compensation benefits;

(b) the claim is later adjudged compensable by the workers' compensation court; and

(c) in the case of attorneys' fees, the workers' compensation court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.

(2) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

¶43 Here, the claim was not judged compensable, thus there is no authority for either costs or attorney's fees.

#### JUDGMENT

¶44 Claimant is not entitled to benefits under the Workers' Compensation Act. His petition is **dismissed with prejudice**.

¶45 Claimant is not entitled to costs or attorney's fees.

¶46 This JUDGMENT is certified as final for purposes of appeal.

¶47 Any party to this dispute may have twenty days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 27<sup>th</sup> day of August, 2003.

(SEAL)

\s\ Mike McCarter  
JUDGE

c: Mr. Patrick R. Sheehy  
Mr. Michael P. Heringer  
Submitted: June 2, 2003

1. *Stratemeyer v. Lincoln County*, 276 Mont. 67, 915 P.2d 175 (1996) (Stratemeyer II) (allowing a deputy sheriff to sue in tort for mental-mental injuries excluded from the definition of injury in § 39-71-119, MCA, and hence also excluded from the exclusive remedy provision of § 39-71-411, MCA. )

2. *Kleinhesselink v. Chevron, U.S.A.*, 277 Mont. 158, 920 P.2d 108 (1996) (denying compensation benefits to safety coordinator at mining company who suffered mental and physical effects from mental response of guilt, depression, etc., following death of worker when his safety instructions were ignored.)