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MULTIPLE CHEMICAL SENSITIVITY SYNDROME: OCCUPATIONAL DISEASE OR WORK-RELATED ACCIDENT?

Kelly Corbett*

I. INTRODUCTION

Helen Keplinger marvels over the fact that the chemicals she encountered in her work-place, the United States Environmental Protection Agency (EPA) headquarters in Washington, D.C., rendered her chemically sensitive for the rest of her life.¹ When Keplinger first moved into the newly painted and carpeted EPA building in 1985, she began experiencing daily headaches, congestion, dizziness, and fatigue.² In addition, she began to hear a constant "whooshing" sound in her ears and noticed that she would lose her voice every Monday morning after a weekend away from the office.³ By 1987, Keplinger had become so dizzy and fatigued that she was unable to jog around her neighborhood as she had done every evening for the previous twelve years.⁴ The chemical exposure affected her work performance as well.⁵ She could not keep track of important appointments or remember on which projects she was working.⁶

In 1989, the solvent smell in the EPA headquarters became so extreme during the reroofing, painting, and wallpapering of the build-

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* Articles Editor, 1996–1997, BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW.
¹ See Helen Keplinger, Patient Statement: Chemically Sensitive, 10 TOXICOLOGY AND INDUS. HEALTH 313, 313 (1994).
² Id.
³ Id. at 313–14.
⁴ Id. at 314.
⁵ Id.
⁶ Keplinger, supra note 1, at 314.
ing that the employees were evacuated from the building.\(^7\) After this office remodeling, Keplinger not only became ill from the chemicals in her office, but also started having adverse reactions to everyday chemical exposures.\(^8\) She no longer could drive behind, or ride in, a bus without experiencing severe nausea.\(^9\) She could not sit near people who were wearing perfume or cologne.\(^10\) Keplinger's symptoms expanded to include frequent nose bleeds, twitching in her left eye, and constant feelings of depression and anger.\(^11\) Today, Keplinger's condition forces her to work from her home.\(^12\) She cannot pump gas, walk through the detergent aisle in the supermarket, read a newspaper, or even enter a shopping mall.\(^13\) She does not expect many people to believe her story—many doctors do not.\(^14\) However, Keplinger is only one of more than sixty EPA employees who no longer can work at the EPA headquarters because of chemical sensitivities.\(^15\)

In a similar instance, police found Cynthia Wilson, a successful commercial real estate developer and general contractor, wandering around in fifteen inches of snow in below-zero weather without shoes or a coat.\(^16\) When the police took her to the hospital, doctors diagnosed Wilson with formaldehyde poisoning.\(^17\) The diagnosis seemed reasonable given her line of work as a general contractor.\(^18\) More troubling, however, was that she continued to experience symptoms of the poisoning at low exposure levels that the government considered to be safe.\(^19\) Since her initial exposure to formaldehyde, Wilson is sensitive to a whole range of other common chemicals.\(^20\) She gets hemolytic hematuria, commonly characterized by blood in urine, from freshly cut wood and new carpeting.\(^21\) The smoke from her neighbors' wood stoves causes her to have bronchial pneumonia for most of the winter.

\(^7\) Id. at 315.
\(^8\) Id.
\(^9\) Id.
\(^10\) Id.
\(^11\) See Keplinger, supra note 1, at 316.
\(^12\) See id.
\(^13\) Id.
\(^14\) See id. at 316–17.
\(^15\) Id. at 317.
\(^16\) Cynthia Wilson, Patient Statement: Chemically Sensitive, 10 TOXICOLOGY AND INDUS. HEALTH 319, 319 (1994).
\(^17\) Id.
\(^18\) Id.
\(^19\) Id.
\(^20\) Id. at 320.
\(^21\) See Wilson, supra note 16, at 320.
and touching printed material like newspapers and magazines causes her hands and feet to swell and bruise. Phenol-based products send Wilson into cardiac distress, and many different chemical exposures give her daily headaches that are so intensely painful that they distort her vision and hearing. Wilson experiences fatigue so acute that she often falls off chairs, or falls to the floor where she has been standing. More troubling is the neurological damage she sustained from chemical exposures. She no longer has much short term memory, and cannot do even simple math without a calculator. Wilson does not hold out much hope that her condition will improve. She spends most of her time trying to isolate herself from any type of chemical exposure.

Countless narratives of chemical sensitivities similar to those of Keplinger and Wilson indicate that Multiple Chemical Sensitivity Syndrome (MCS) is a clinical disease caused by exposure to combinations of low-level environmental chemicals. Despite these indications, however, the medical community has neither defined MCS medically nor created a diagnostic test for the disease. In the last few years, employees seeking workers' disability compensation for MCS have brought several lawsuits alleging that they developed MCS from toxins and chemicals in their work environments. As of this time, no MCS sufferers have been able to persuade triers of fact that their

22 See id.
23 Id.
24 Id.
25 Id.
26 See Wilson, supra note 16, at 319.
27 See id. at 320.
28 Id.
work environment both caused MCS and left them totally and permanently disabled.\textsuperscript{32}

The plaintiffs' strategy used in all the MCS workers' compensation cases has been to fit MCS into the particular state statute's definition of an "occupational disease."\textsuperscript{33} This approach has not been successful because claimants have had trouble proving that their MCS arose out of and in the course of their employment, as opposed to being just a common disease of everyday life.\textsuperscript{34} Additionally, claimants have had trouble proving that their MCS stemmed from the duties of their particular employment.\textsuperscript{35}

An alternative approach claimants could use to obtain workers' compensation in these cases would be to define MCS as a work-related "accident" instead of an "occupational disease."\textsuperscript{36} Sufferers of Cumulative Trauma Disorders (CTDs), occupational disorders similar to MCS in several respects, have been successful in obtaining workers' compensation by fitting the disorders into state statutory definitions of accident.\textsuperscript{37} Based on the success of workers' compensation claims for CTDs, which define the syndrome as an accident, MCS sufferers may find the accident approach a more useful method for obtaining workers' compensation for their work-derived ailments.\textsuperscript{38}

This Comment explores this alternative claim for MCS sufferers seeking workers' compensation. Specifically, the Comment focuses on the failure of employees with MCS to obtain benefits by claiming occupational disease, and highlights the accident claim as a potentially

\textsuperscript{32} See McCreary, 835 P.2d at 470; Harris, 1994 WL 146333, at *1; Weekley, 615 N.E.2d at 60; Armstrong, 907 P.2d at 925; Dobbs, 588 So. 2d at 765; Helinski, 672 A.2d at 157; Ruether, 455 N.W.2d at 476; Kehoe, 648 A.2d at 473; Fuyat, 811 P.2d at 1315; Yanarella, 599 N.Y.S.2d at 769; Saif Corp., 824 P.2d at 1189; Chavin, 459 S.E.2d at 523; Smith, 1995 WL 228247, at *1; Conradt, 539 N.W.2d at 714.

\textsuperscript{33} See, e.g., Weekley, 615 N.E.2d at 60; Dobbs, 588 So. 2d at 765.

\textsuperscript{34} See, e.g., Weekley, 615 N.E.2d at 62; Ruether, 455 N.W.2d at 477.

\textsuperscript{35} See, e.g., McCreary, 835 P.2d at 474–75; Weekley, 615 N.E.2d at 60–61.


\textsuperscript{37} See, e.g., Lockeby, 812 S.W.2d at 701; Castaneda, 596 N.E.2d at 1282.

\textsuperscript{38} See infra Section VI.
more useful method for obtaining compensation. Section II focuses on MCS, detailing both the history and health effects of the syndrome. Section III describes the state system of workers' compensation and lays out the statutory requirements that an MCS sufferer must prove in order to receive workers' compensation under both accident and occupational disease claims. Section IV examines the workers' compensation cases in which workers claimed they developed MCS as a result of their employment, as well as the reasons why these occupational disease claims were unsuccessful. Section V examines broadening judicial interpretations of statutory accident definitions. This section uses CTDs, work-related disorders similar to MCS, to illustrate the judicial trend of liberalizing accident statutory requirements. Section VI proposes that MCS claimants may find accident claims more useful than occupational disease claims for obtaining disability compensation.

II. MULTIPLE CHEMICAL SENSITIVITY SYNDROME (MCS)

A. History of MCS

About thirty-five years ago, allergist Theron Randolph first described the phenomenon of chemical sensitivity when he diagnosed his wife with a "petrochemical problem" after observing her become ill when exposed to derivatives of gas, oil, and coal. Randolph's description of his wife's symptoms matches some of the more common symptoms we associate with MCS sufferers today, including respiratory problems, headaches, fatigue, irritability, and depression. Randolph advised his wife and patients with similar complaints to avoid certain common chemical exposures and prescribed sauna therapy and vitamin and mineral supplementation to treat the illness. The theory behind Randolph's practices was "that ecologic illness is manifested as a reaction to environmental insults associated with air, water, food, drugs, and our habitat as modified by individual susceptibility in terms of specific adaptation of the patients reacting as a biologic unit." Additionally, Randolph attributed stress and frequency of ex-

40 Miller, supra note 29, at 253.
41 Id.
42 Deborah F. Dubin, Americans with Disabilities Act Accommodation Issues May Apply to
posure as the primary causes for reactions to environmental substances. The contemporary medical community criticizes followers of Randolph’s controversial methods, known as “clinical ecologists,” for their lack of critical thinking and scientific testing. When the medical community discredited the clinical ecologists, it also discredited the disease that the ecologists purported to be curing, MCS.

In 1991, physicians finally separated MCS from their concerns about the approaches of the clinical ecologists and began to recognize the syndrome as a clinical illness. The National Research Council, the EPA, and the National Institute of Mental Health Sciences brought together clinicians, toxicologists, immunologists, epidemiologists, psychiatrists, and psychologists to develop research recommendations for studying MCS. In the fall of 1991, the Agency for Toxic Substances and Disease Registry sponsored a second national meeting on MCS with the Association of Occupational and Environmental Clinics. MCS became a governmental concern in 1993 when the United States Congress directed the Agency for Toxic Substances and Disease Registry to use $250,000 of its budget for research on low-level chemical sensitivities. Finally, in 1994, the Department of Veterans Affairs proposed to develop Environmental Hazards Research Centers in veterans hospitals in order to study medical ailments that Persian Gulf War veterans attribute to exposures from oil well fires, paints, fuels, pesticides, and other toxins. These large research initiatives indicate that the government and the medical community are beginning to recognize MCS as a clinical illness.
B. The Health Effects of MCS

Current clinical observations by the medical community indicate that cases of MCS develop in a two-step process. In the first stage of sensitization, patients develop symptoms after exposure to high levels of environmental chemicals, or after continuous and repeated exposure to lower levels of chemicals. Exposure to pesticides, solvents, combustion products, indoor air pollutants, drugs, and anesthetics commonly cause sensitization. Common symptoms stemming from the initial exposure include fatigue, respiratory problems, memory loss, difficulty concentrating, dizziness, gastrointestinal problems, depression, headaches, muscle aches, chest pain, nausea, and irritability.

Following this sensitization stage, patients enter into a triggering stage where chemicals unrelated to the original sensitizing event begin to trigger symptoms. As part of this spreading phenomenon, patients suffer severe symptoms from low levels of common, everyday chemicals such as tobacco smoke, gasoline, traffic exhaust, cleaning agents, hair spray, and perfume. Again, the same host of symptoms including fatigue, dizziness, headaches, respiratory problems, chest pain, muscle aches, memory loss, depression, and irritability occur from exposure to these everyday chemicals.

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52 Id. at 258–63. For a discussion on this two-step process see generally Sparks, supra note 30, at 718–36; Mark R. Cullen, The Worker with Multiple Chemical Sensitivities: An Overview, 2 OCCUPATIONAL MED. 655, 655–61 (1987).

53 Cullen, supra note 52, at 657.

54 Miller, supra note 29, at 257.

55 Id. at 266.

56 Id. at 260.

57 Id.

58 Id. Dr. Mark R. Cullen's definition of MCS is the most widely used clinical definition: MCS is an acquired disorder characterized by recurrent symptoms, referable to multiple organ systems, occurring in response to demonstrable exposure to many chemically unrelated compounds at doses far below those established in the general population to cause harmful effects. No single widely accepted test of physiologic function can be shown to correlate with symptoms. Cullen, supra note 52, at 657. For another commonly cited definition of MCS see the clinical definition by Ashford and Miller:

1. Symptoms involving virtually any system in the body or several systems simultaneously, but most frequently the central nervous system (fatigue, mood changes, memory and concentration difficulties).

2. Different symptoms and severity in different individuals, even among those experiencing the same exposure.

3. Induction or sensitization by a wide range of environmental agents, including pesticides, solvents, and combustion products.

4. Subsequent triggering by lower levels of exposure than those involved in initial
Because the medical community only recently discovered the link between these symptoms and MCS, a comprehensive regulatory scheme for preventing the syndrome is nonexistent.\textsuperscript{59} The recent interest in studying MCS, however, demonstrates that the syndrome is clearly a national concern that carries with it extensive public policy and regulatory ramifications.\textsuperscript{60}

III. Workers' Compensation Statutes

Workers' compensation is a state system that compensates workers who have sustained physical or mental injuries due to their jobs.\textsuperscript{61} No overarching federal system of compensation exists, and the federal government only provides coverage for maritime workers on navigable waters of the United States and to employees of the United States Government.\textsuperscript{62} Workers' compensation systems benefit employees and 

induction of the illness.

5. Spreading of sensitivity to other, often chemically dissimilar substances. Each substance may trigger a different but reproducible constellation of symptoms.

6. Concomitant food, alcohol, and medication intolerances, estimated to occur in a sizable percentage of MCS patients.

\textit{See} Miller, \textit{supra} note 29, at 261.

\textsuperscript{59} See Dubin, \textit{supra} note 42, at 24-25.

\textsuperscript{60} Miller, \textit{supra} note 29, at 256.

\textsuperscript{61} JEFFREY V. NACKLEY, PRIMER ON WORKERS' COMPENSATION 1 (1989). Before states adopted workers' compensation systems, the only way for injured workers to obtain compensation for injuries occurring in the work-place was to sue the employer for negligence. Barry Bennett, \textit{Workers' Compensation and the Laborer: Reflections of an Uninjured Jurist}, 11 \textit{Hamline J. Pub. L. & Pol'y} 211, 212 (1990). Yet common law defenses to negligence such as contributory negligence, assumption of the risk, and the fellow-servant rule made it extremely difficult for workers to recover. \textit{Id.} After the industrial revolution in the late nineteenth century, the industrial injury and death rate exploded and states began to pass employer liability laws to make it easier for workers to recover from these work-place accidents. \textit{Id.} at 213-14. These first employer liability laws weakened common law defenses, making it easier for workers to win suits. \textit{Id.} at 214. In addition, under these new laws, employers began to settle lawsuits with substantial settlements rather than taking the risk of losing in court. \textit{Id.} Because businesses were concerned about the uncertainty of the potential cost of industrial accidents, reform became inevitable. \textit{Id.}

New York established the first compulsory state workers' compensation system in 1910, but the New York Court of Appeals struck the system down as unconstitutional the next year because the state had exceeded its police powers by imposing strict liability without fault on certain categories of occupations. See 1 A. LARSON, \textit{THE LAW OF WORKMEN'S COMPENSATION} § 5.20 (rev. ed. 1995). Instead of abolishing workers' compensation altogether, New York amended its constitution to solve the constitutionality question. \textit{Id.} Then, just six years later, the United States Supreme Court approved of employee compensation systems in \textit{New York Cent. R.R. v. White}, 243 U.S. 188, 189-90 (1917), and shortly after the decision every state in the United States adopted its own state workers' compensation laws. Bennett, \textit{supra} note 61, at 215.

\textsuperscript{62} NACKLEY, \textit{supra} note 61, at 1.
their families by supplying no-fault recovery for injuries and diseases arising out of and in the course of employment. In addition, these systems also benefit employers, who often are obligated to pay less under workers' compensation laws than from potentially high jury verdicts after costly courtroom battles.

Although states originally created compensation systems to compensate victims of industrial accidents, over time state legislatures have amended their systems to include compensation for occupational diseases. The basic tenet of all workers' compensation systems is that workers claiming benefits must prove that their disability "arose out of and in the course of employment." In order to prove that their disability arose out of their employment, claimants must choose to define their disability as either an "accident" or an "occupational disease," and then must satisfy the requirements of causation under the definition they choose. Although each state has its own compensation laws, the similarities among the statutes' provisions are so substantial that these statutes can be discussed in terms of general principles.

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63 Id.

64 In all states, administrative agencies called industrial commissions, boards of workers' compensation, or industrial accident boards make workers' disability compensation decisions. Id. at 73. The power of these agencies to hear disputes between claimants and employers is limited to the terms of state statutes and constitutional restrictions. Id. at 65–67. The rules of evidence are not applied strictly in agency proceedings, but the evidence must be substantially probative and relevant to support an agency's findings. Id. at 87. All states also provide for judicial review of these administrative agency decisions. Id. at 87–88. In a majority of states, the review is limited to issues of law with a possible appeal of factual questions if the agency's finding was arbitrary, capricious, or an abuse of discretion. Id. at 83–85. Claimants have the burden of proving the workplace disability in court and generally must prove their case by a preponderance of the evidence. Id. at 77.

Workers' compensation boards require that claimants prove the causal connection between their accidents or diseases and the workplace by expert medical testimony. H. Douglas Jones & Cathy Jackson, Cumulative Trauma Disorders: A Repetitive Strain on the Workers' Compensation System, 20 N. Ky. L. REV. 765, 767 (1993). This medical testimony must consist of a diagnosis of the claimant's disorder, and a statement as to the presence or absence of causation from a medical standpoint. Id. Using the expert medical testimony, as well as all other evidence, the trier of fact ultimately must determine whether or not a disorder arose from the workplace. Ruether v. State, 455 N.W.2d 475, 478 (Minn. 1990).

65 See generally Larson, supra note 61, § 41.

66 Id. § 6–13.24 (discussing the "arising out of and in the course of" test).

67 Nackley, supra note 61, at 2–3; see generally Larson, supra note 61, § 37–41 (discussing accident and occupational disease claims).

68 Nackley, supra note 61, at 2.
A. Accident Claims Versus Occupational Disease Claims

The most common type of workers’ compensation claim is an accident claim. An accident often is described as a tangible happening of a traumatic nature from an unexpected cause resulting in either external or internal physical harm. Accident claims are compensable under state workers’ compensation acts if claimants can prove that the disability arose out of and in the course of their employment. To prove that an accident arose out of the work-place, employees generally have to satisfy two requirements. First, employees must prove that the accident was sudden, having an identifiable moment of injury. Second, employees must show that the accident was unexpected and unintended.

Similar to accident claimants, workers claiming occupational disease also must prove that the illness arose out of and in the course of employment. In order to satisfy this causal link, claimants must prove that the disease is due to causes and conditions characteristic of a particular employment. As part of this requirement, claimants must prove that the nature of their employment exposes them to a greater risk of the disease than the risk experienced by the general public. In other words, claimants must prove that specific toxins or materials found at work sites caused the disease. Additionally, many statutes require that the hazards causing the disease be peculiar to a claimant’s particular occupation and job tasks.

69 Id. at 11.
72 Larson, supra note 61, § 37.20.
73 Id.
74 Id.
75 Id. § 41.00.
76 Id. § 41.30–32.
77 Larson, supra note 61, § 41.30–32.
79 Id. For example, the Nebraska Workers’ Compensation Statute describes an occupational disease as:

“O]nly a disease which is due to causes and conditions which are peculiar to a particular trade, occupation, or process of employment and shall exclude all ordinary diseases of life to which the general public is exposed.”

Contrary to the definition of a work-place accident, state legislatures do not consider occupational diseases to be unexpected or unintended. Occupational diseases are merely an inherent risk of continued exposure to the conditions of an individual's employment. Furthermore, the onset of the disorder does not need to be sudden. Occupational diseases may be caused by one work-place exposure, or by a gradual exposure to substances or conditions inherent in the workplace, as long as a claimant can link the disease to an employment environment.

In general, employees suffering from accidents have more success securing workers' compensation benefits than do employees suffering from occupational diseases. The primary reason for this compensation inequity is that state statutes make the causation requirement between the disability and the work-place harder to prove in occupational disease cases than in accident cases. There are more stringent causation requirements for occupational diseases because state governments often assume that accidents are relatively easy to link to the work-place, while the link between claimants' diseases and their work-places is not always as obvious. Thus, workers' compensation statutes only require accidents to be sudden and unexpected, while these same statutes require occupational disease claimants to prove that their diseases are both peculiar to their particular occupation and not ordinary diseases of life. This peculiarity requirement is often extremely difficult for employees to satisfy because the precise causes of occupational diseases are usually difficult to diagnose. Even if a medical basis exists to determine the cause of a particular disease, there may be no records or proof establishing an employee's length of exposure to certain toxins or environmental hazards.

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81 Larson, supra note 61, § 41; Freedman, supra note 80, at 4.
85 See Vicusi, supra note 83, at 63.
86 Id. at 54.
87 Id. at 63.
88 Id.
89 Id.
In addition to restrictive causation requirements, the latency period associated with many occupational illnesses also hampers attempts to secure workers' compensation.90 The latent onset of many occupational illnesses makes it difficult for claimants to find evidence to prove their diseases are employment-related.91 Additionally, the time required for many occupational diseases to develop conflicts with statutory requirements that workers file disability claims within a specific period of time.92 The delayed onset of many occupational diseases hinders workers both from realizing that they have a compensable disability and from filing their claim before the applicable statute of limitations has expired.93

As of this time, all MCS workers' compensation claimants have filed for disability benefits under statutory definitions of occupational disease.94 Not one of these MCS sufferers has been able to convince a judge that the medical condition of MCS can completely satisfy the requirements of the statutory occupational disease definition.95

IV. MCS WORKERS' COMPENSATION CASES BASED ON OCCUPATIONAL DISEASE CLAIMS

In the limited number of workers' compensation cases focusing on MCS, not a single court in any state has awarded workers' compensation based on the theory that MCS is a permanently and totally disabling occupational disease.96 There are several reasons for this lack of success. First, because causation in workers' compensation

90 See Vicusi, supra note 83, at 63.
91 Id.
92 Id.
93 Id.
95 McCreary, 835 P.2d at 470; Harris, 1994 WL 146333, at *1; Weekley, 615 N.E.2d at 60; Armstrong, 907 P.2d at 925; Dobbs, 588 So. 2d at 765; Helinski, 672 A.2d at 157; Ruether, 455 N.W.2d at 476; Kehoe, 648 A.2d at 473; Fuyat, 811 P.2d at 1315; Yanarella, 599 N.Y.S.2d at 769; Saif Corp., 824 P.2d at 1189; Channin, 459 S.E.2d at 523; Smith, 1995 WL 228247, at *1; Conradt, 539 N.W.2d at 715.
96 See supra note 94.
cases has to be proven with medical evidence, most cases involve conflicting medical testimony. Courts often reject medical testimony linking MCS with the work-place, thereby denying compensation, because MCS has not yet gained full acceptance as a clinical disease. Second, even if judges believe that MCS is a clinical disease, many still deny compensation based on the fact that the illness cannot arise out of the work-place because it is an illness to which people are exposed equally outside of the work-place. Furthermore, courts often deny compensation by noting that MCS is not peculiar to the employment of a claimant, and therefore could not stem from an employee’s actual duties or tasks.

In the few cases where courts have awarded compensation to MCS sufferers, they did so based on the existence of other illnesses and refused to recognize MCS as the cause of the disability. Moreover, the one court that compensated an employee suffering from MCS evidently did not understand the full ramifications of the illness as a totally debilitating disease, because the court only awarded the claimant partial disability.

A. Cases Denying Compensation: MCS Perceived as an Ordinary Disease of Everyday Life

In many cases, courts denied compensation to MCS claimants reasoning that the disease could derive from non-work related factors found in the ordinary course of living. Several courts have held that claimant’s work environments could not have caused their illness because MCS is an ordinary disease of everyday life to which the general public is equally exposed. For instance, in the 1990 case of Ruether v. State, the Minnesota Supreme Court affirmed the workers’ compensation board’s decision to deny benefits to a laboratory assistant who claimed to have developed a multitude of symptoms including headaches, gastrointestinal pain, and shortness of breath, from

97 See, e.g., Harris, 1994 WL 146333, at *2–3; Smith, 1995 WL 228247, at *2.
98 See Harris, 1994 WL 146333, at *2–3; Smith, 1995 WL 228247, at *2.
99 See Weekley, 615 N.E.2d at 60; Ruether, 455 N.W.2d at 476.
103 See Weekley, 615 N.E.2d at 60; Dobbs, 588 So. 2d at 764; Ruether, 455 N.W.2d at 477.
104 See Weekley, 615 N.E.2d at 60; Dobbs, 588 So. 2d at 764; Ruether, 455 N.W.2d at 477.
her work environment. The claimant attributed these symptoms to three identified episodes of exposure to certain chemicals in the lab which she claimed led to an acquired intolerance to chemicals. The compensation board found that the employee did, in fact, suffer from chemical sensitivities. The judge refused benefits, however, reasoning that the employee's condition was not caused by her employment, but rather was an ordinary disease of life to which the general public equally is exposed. Accordingly, the court affirmed the board's finding that the claimant had not sustained a compensable occupational disease.

Similarly, in the 1993 case of *Weekley v. Industrial Commission*, the Illinois Appellate Court affirmed the workers' compensation board's denial of disability benefits based on the reasoning that MCS could not be caused by the work-place because it was a disease to which the general public also was exposed. The employee contended that she developed MCS after MidCon Corporation remodeled its office space by painting, hanging wallpaper, and laying carpet. After this exposure, the employee experienced severe nausea, dizziness, fatigue, facial pain, and disorientation. The claimant believed that in addition to the symptoms suffered immediately after the remodeling, this first exposure also triggered her permanent hypersensitivity to other everyday chemicals such as perfumes, auto fumes, gasoline, cigarette smoke, newspaper, hair spray, deodorizers, fabric softeners, and dust. Again, the court in this case denied benefits on the basis that the claimant did not establish any type of risk in her work environment greater than that to which the general public is exposed.

B. Cases Denying Compensation: MCS Not Peculiar to Individual Employment Duties

Along with the belief that MCS is an ordinary disease of everyday life, courts also have denied compensation to MCS claimants based on

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105 *Reuther*, 455 N.W.2d at 477.
106 *Id.*
107 *Id.*
108 *Id.*
109 *Id.*
111 *Id.* at 61.
112 *Id.*
113 *Id.*
114 *Id.* at 62.
the reasoning that their disorder did not result from conditions peculiar to their particular occupational tasks. This requirement often is not met in MCS cases because MCS usually is caused by toxins in the work-place environment that have nothing to do with claimants' actual work duties.

For example, in the 1992 case of *McCreary v. Industrial Commission of Arizona*, the Arizona Court of Appeals affirmed the workers' compensation board's denial of benefits to a computer engineer because it determined that office construction and remodeling was not an unavoidable risk stemming from the nature of the claimant's employment as an engineer. The employee claimed that his chemical sensitivities began after he was exposed to chemicals from the construction of a new work facility. Two months after the move, the employee said that his symptoms of sinus pains, headaches, fatigue, depression, loss of concentration, inability to complete sentences, and vision problems were unbearable. The court affirmed the board's conclusion that the employee's MCS was not an occupational disease because it did not result from causes and conditions peculiar to his employment.

Employing reasoning similar to the *McCreary* court, the Illinois Appellate Court in *Weekley v. Industrial Commission* also denied benefits, reasoning that MCS was not a risk stemming from the employee's occupational duties. Again, because office redecorating was not an inherent risk of the claimant's job as a secretary, the court found that her disorder was not particular to her employment.

C. Cases Denying Compensation: MCS Not Considered a Clinical Disease

Several courts have affirmed workers' compensation boards' decisions to deny disability benefits to MCS sufferers because there is no diagnostic test to support a finding of MCS and no generally accepted
scientific understanding of causation for the condition.\textsuperscript{123} Harkening back to the poor reputation of clinical ecologists, these courts have reasoned that the medical community has not completely accepted MCS as a clinical syndrome.\textsuperscript{124}

In the 1994 case of \textit{Harris v. Central Arkansas Maintenance}, the Arkansas Court of Appeals affirmed the denial of workers' compensation based on the reasoning that a MCS diagnosis is still controversial within established medicine.\textsuperscript{125} The employee claimed that the cleaning solutions she used in her job cleaning restrooms and trash cans at a public park caused her not only to suffer symptoms of headaches, rashes, nausea, diarrhea, and fatigue at the time she was cleaning, but that the incident triggered her sensitivity toward a multitude of common chemicals.\textsuperscript{126} Although the medical data in the case was conflicting, the doctor who testified that the claimant was completely disabled was a specialist in clinical ecology.\textsuperscript{127} Accordingly, the court gave less weight to his opinion than to the testimony of the defendant's doctors who found no chemical sensitivities, and denied the employee's claim for disability compensation.\textsuperscript{128}

Similarly, in the 1995 decision of \textit{Smith v. Chesapeake & Potomac Telephone Company}, the Virginia Court of Appeals affirmed the workers' compensation commission's decision to deny compensation because scientists had not yet proven MCS as a clinical disorder.\textsuperscript{129} The employee in \textit{Smith} claimed to have inhaled fumes at work on three individual occasions during July and August of 1991.\textsuperscript{130} After each incident, the employee reported symptoms of headaches, nausea, dizziness, shortness of breath, erratic heartbeat, loss of voice, cough, and sore throat.\textsuperscript{131} The claimant saw a doctor who diagnosed her with MCS.\textsuperscript{132} Then, the telephone company requested that she see another

\begin{thebibliography}{132}
\bibitem{124} See, \textit{e.g.}, \textit{Harris}, 1994 WL 146333, at *2–3; \textit{Smith}, 1995 WL 228247, at *2.
\bibitem{125} \textit{Harris}, 1994 WL 146333, at *2–3.
\bibitem{126} \textit{Id.} at *1.
\bibitem{127} \textit{Id.} at *2.
\bibitem{128} \textit{Id.} at *4.
\bibitem{130} \textit{Id.} at *1.
\bibitem{131} \textit{Id.}
\bibitem{132} \textit{Id.} at *2.
\end{thebibliography}
doctor who later disputed the first doctor's diagnosis of MCS. The second doctor stated that there was no diagnostic test to support a finding of MCS and no generally accepted scientific understanding of causality for such a condition. In denying workers' compensation benefits, the commission accepted the opinion of the second doctor and rejected the opinion of the first doctor, doubting the very existence of MCS.

D. Cases Denying Compensation for MCS While Awarding Compensation for Other Work-place Related Illnesses

In contrast to court decisions which denied compensation benefits to MCS sufferers outright, some courts have given workers' compensation to employees who claimed to suffer from MCS as well as from other illnesses caused by work-place exposures. In these cases, courts awarded disability compensation to employees because they found that one of the employees' other illnesses was an occupational disease. In not one of these cases, however, did the court find MCS to be a compensable occupational disease.

In the 1991 workers' compensation case of Fuyat v. Los Alamos National Laboratory, the New Mexico Court of Appeals affirmed the workers' compensation board's decision to deny compensation to a laboratory chemist for her claim of MCS, but awarded compensation for another disease called trigeminal neuralgia. The employee claimed that her exposure to aqua rega fumes at work in July of 1985 was the triggering event that led to her chemical sensitivities. Two clinical ecologists diagnosed the employee with MCS. On appeal, the employer argued that the testimony of these two clinical ecologists should not have been admissible because clinical ecology is not recognized by the American Medical Association. The court disagreed with the

133 Id. at *3.
134 Smith, 1995 WL 228247, at *3.
135 Id.
137 See Dobbs, 588 So. 2d at 766; Fuyat, 811 P.2d at 1316; Saif Corp., 824 P.2d at 1190.
139 Fuyat, 811 P.2d at 1316.
140 Id. at 1315.
141 Id. at 1317.
142 Id.
employer’s argument and stated that the testimony of the clinical ecologists was admissible, although the ecologists’ poor reputation did affect the weight the judge would give to the testimony.143 After admitting the testimony, the court then went on to reject the diagnosis of MCS because of the clinical ecologist’s lack of credibility.144 The court, however, did award the employee permanent partial disability for the disease of trigeminal neuralgia.145

Likewise, in the 1991 case of Dobbs v. Board of Supervisors and the 1992 case of Saif Corporation v. Scott, the Louisiana Court of Appeal and the Oregon Court of Appeals denied workers’ compensation for employees’ claims of MCS, but awarded compensation for other illnesses from which the employees suffered.146 The courts in these two cases accepted doctors’ diagnoses for other illnesses, but refused to accept the diagnosis of MCS based on the reasoning that MCS is a disease of everyday life, and is still controversial within the medical community.147

Moreover, in the 1995 case of Armstrong v. City of Wichita, the Court of Appeals of Kansas refused to label the claimant’s occupational disease as MCS but awarded him benefits anyway, even though it could not identify his condition as any other known medical illness.148 The claimant, Dan Armstrong, testified that he had suffered from weakness, confusion, headaches, tremors, diarrhea, and fatigue ever since he was exposed to two separate chemicals at his job in 1989.149 After hearing conflicting testimony from doctors as to whether or not the claimant suffered from MCS, the workers’ compensation board determined that it was not necessary to decide whether MCS was a clinical diagnosis, or to label the particular occupational disease from which the claimant suffered, when issuing benefits.150 The Court of Appeals of Kansas affirmed the decision of the appeals board concluding that Armstrong suffered from a compensable occupational disease, but also refused to recognize MCS as the valid medical term describing the disability.151

143 Id.
144 Fuyat, 811 P.2d at 1317.
145 Id. at 1318.
147 See Dobbs, 588 So. 2d at 766; Saif Corp., 824 P.2d at 1190.
149 Id. at 925.
150 Id. at 927–28.
151 Id. at 928.
E. Cases Where Courts Have Treated MCS as a Clinical Illness that Deserves Compensation

Only two courts thus far have recognized MCS as an actual clinical illness, and of these two cases only one has awarded any disability compensation.\(^{152}\) Additionally, from its finding that the employee was only partially disabled, it is apparent that even this one court did not fully understand the serious implications of the disease.\(^{153}\)

In the 1993 case of *Yanarella v. IBM Corporation*, the New York Supreme Court affirmed the decision of the workers’ compensation board, holding that a computer programmer was partially disabled from exposure to chemicals at work.\(^{154}\) Although the medical evidence presented did persuade the board that the employee suffered from MCS, the board only granted partial disability for the disorder.\(^{155}\) Additionally, the board concluded that the claimant was employable as a computer programmer in a nonindustrial environment.\(^{156}\)

In addition to *Yanarella*, the court in *Appeal of Kehoe* recognized MCS as an actual clinical illness.\(^{157}\) In this 1994 case, the New Hampshire Supreme Court decided that a workers’ compensation board did not adequately determine whether Kehoe was suffering from MCS when the board denied her benefits.\(^{158}\) Kehoe worked at Lockheed-Sanders from 1979 through 1991 and claimed that her headaches and respiratory problems developed from continuous exposure to chemicals at her workplace.\(^{159}\) In its decision, the board misinterpreted Kehoe’s diagnosis as occupational asthma, rather than MCS, and found that Kehoe had not proven that her symptoms were an occupational disease as defined by state law.\(^{160}\) In its reversal of the board’s decision and remand, the New Hampshire Supreme Court held that the board should have determined whether Kehoe actually suffered from MCS and, if so, whether the exposure to chemicals in her workplace caused her symptoms.\(^{161}\)


\(^{153}\) See *Yanarella*, 599 N.Y.S.2d at 769.

\(^{154}\) Id.

\(^{155}\) Id.

\(^{156}\) Id.


\(^{158}\) Id.

\(^{159}\) Id. at 473.

\(^{160}\) Id. at 474.

\(^{161}\) Id.
In sum, all the MCS claimants discussed in this Section attempted to fit MCS into their state statute's definition of occupational disease. Most of the compensation boards denied occupational disease compensation in these MCS cases, reasoning that MCS had not gained full acceptance in the medical community as a clinical disease, could not be peculiar to the work-place because it was a disease of everyday life, and was not caused by claimants' particular work-place tasks. From the reasoning in these cases, it is clear that MCS sufferers have not been able to meet the strict requirements of the statutory definition for occupational disease.

Although MCS claimants have not been able to obtain disability compensation for an occupational disease, they may be able to obtain compensation by claiming a work-place accident. As described in Section III of this Comment, the statutory requirements for proving an accident are easier to satisfy than the more stringent occupational disease requirements. Furthermore, in addition to this looser statutory language, the requirements for accident claims are also easier to satisfy because courts have significantly broadened the definition of accident in recent case law. The following section of this Comment illustrates this liberal judicial reinterpretation of accident requirements.

V. BROADENING JUDICIAL INTERPRETATION OF STATUTORY ACCIDENT DEFINITIONS

Many courts construe statutory accident requirements extremely broadly in order to compensate employees suffering from non-traditional work-related disorders. This broadening of the statutory re-

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162 See supra notes 103–61 and accompanying text.

163 See id.


165 See supra Section III.

166 See infra Section V.

167 See, e.g., Lockeby, 812 S.W.2d at 705; Castaneda, 596 N.E.2d at 1284; Condon, 903 P.2d at 777; Parks, 340 So. 2d at 281.
quirements of accident definitions can be seen in workers’ compensa-
tion cases focusing on Cumulative Trauma Disorders (CTDs).  

Sufferers of CTDs, work-place injuries similar to MCS in several 
respects, have obtained workers’ compensation by classifying their 
disorders as accidents rather than as occupational diseases. MCS 
claimants have not attempted to take advantage of this broadening 
standard for work-place accidents and as a result are being denied 
compensation under the less expansive definitions of occupational 
disease. Because CTDs are similar to MCS illnesses in several ways, 
MCS sufferers should look to accident theories that CTD sufferers 
have used to obtain disability compensation.

A. Similarities Between MCS and CTD Workers’ 
Compensation Cases

CTDs involve injuries to tendons, muscles, and nerves of the hands, 
wrist, elbows, arms, shoulders, legs, or back that are caused by 
repetitive motion of those areas. Similar to MCS sufferers, the 
injured worker in CTD cases has the burden of proving causation 
from expert medical testimony. In addition, as with MCS, there 
exists no single diagnostic test that proves the existence of CTDs. 
Therefore, doctors must diagnose the presence or absence of the 
disorder based on the patients’ own subjective descriptions of symp-
toms, work conditions, and medical history. Additionally, both MCS 
and CTDs often are cumulative in nature, occurring after repeated 
exposure to low-level chemicals in the case of MCS, or after repetitive 
limb motions in the case of CTDs. Furthermore, both disorders 
often are not peculiar to a particular industry or trade.

168 See, e.g., Lockeby, 812 S.W.2d at 705; Castaneda, 596 N.E.2d at 1284; Condon, 903 P.2d at 
777; Parks, 340 So. 2d at 281.
169 See, e.g., Lockeby, 812 S.W.2d at 705; Castaneda, 596 N.E.2d at 1284; Condon, 903 P.2d at 
777; Parks, 340 So. 2d at 281.
170 See supra Section IV.
171 See Denis P. Juge, et al., Cumulative Trauma Disorders—The Disease of the 90’s: An 
172 See, e.g., Lockeby, 812 S.W.2d at 705; Castaneda, 596 N.E.2d at 1284; Condon, 903 P.2d at 
777; Parks, 340 So. 2d at 281.
173 See Juge, supra note 171, at 899.
174 See id.
175 See id.
176 See id.
B. CTD Cases Granting Compensation Under Statutory Accident Definitions

Courts have had little difficulty in adapting the legislative definition of accident to award disability compensation to sufferers of CTDs.\footnote{177} Most state workers' compensation acts require an accident to be unexpected and sudden in order to be compensable.\footnote{178} To fit CTDs into this definition, courts liberally construe these statutes by expanding the unexpected and sudden requirements.\footnote{179}

Many courts now consider the unexpected or unforeseen element of an accident to be met if the cause of the injury was of an accidental character and not intentional.\footnote{180} As early as 1976, the Louisiana Supreme Court in \textit{Parks v. Insurance Co. of North America} began to broaden the unexpected requirement of the accident definition.\footnote{181} The court held that an employee's work-induced chronic bronchitis satisfied the unexpected requirement of the accident definition simply because the disorder was an unexpected effect upon the employee.\footnote{182} In \textit{Sandel v. Packaging Co. of America}, the Nebraska Supreme Court further broadened the unexpected requirement.\footnote{183} The court held that the CTD injury was unexpected because no evidence could show that Sandel had intentionally bent her elbow to cause an injury, or that she had expected such an injury to happen.\footnote{184} Similar to \textit{Parks} and \textit{Sandel}, the Nebraska Supreme Court in \textit{Schlup v. Auburn Needleworks, Inc.}, liberalized the unexpected requirement when it determined that the cause of the employee's carpal tunnel syndrome was of an accidental character and the effect was unforeseen.\footnote{185} In sum, any unintentional injury or disorder caused by the work-place can be determined to meet the unexpected requirement of the accident definition as long as there is no intent on the part of the worker to become injured.\footnote{186}

\footnote{177} Id. at 898–904.
\footnote{178} See \textit{Larson}, supra note 61, § 37.20.
\footnote{181} \textit{Parks}, 340 So. 2d at 281.
\footnote{182} Id.
\footnote{183} \textit{Sandel}, 317 N.W.2d at 915.
\footnote{184} Id.
\footnote{186} See, e.g., \textit{id.}; \textit{Sandel}, 317 N.W.2d at 915.
In addition to broadening the unexpected requirement, many courts now loosely interpret the second statutory requirement that an accident be sudden. Courts now find that a disorder does not have to be sudden in the sense of having a definite time and place. Rather, these courts have held that a claimant can satisfy the sudden requirement by a showing that there was a series of minor traumas which produced the disorder. In *Lockeby v. Massey Pulpwood, Inc.*, for example, the Arkansas Court of Appeals found that, even though an employee with back pain could not point to a specific incident of injury, his repeated trauma could form the basis of an accidental injury. Likewise, in *Robin v. Schwegmann Giant Supermarkets, Inc.*, the Louisiana Court of Appeal held that an employee with severe back problems was subjected to several micro-traumas in the performance of her duties. Similar to *Lockeby* and *Robin*, the Montana Supreme Court in *Bodily v. John Jump Trucking, Inc.*, broadened the accident definition by holding that the sudden requirement can apply to either the cause of the injury or to the result of the injury. Furthermore, in *Hayes v. A. M. Cohron, Inc.*, the Nebraska Supreme Court went so far as to state that the Nebraska workers’ compensation statute now includes injuries resulting from repeated traumas ultimately producing disability. In many states, judicial interpretations of accident definitions have expanded such that one identifiable moment of injury is no longer required as a prerequisite for compensation.

Recently, courts not only have defined cumulative injuries as accidents, but also have helped employees to create identifiable moments of injury for these disorders. While many courts no longer require

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188 See *Lockeby*, 812 S.W.2d at 715; *Robin*, 646 So. 2d at 1033–34; *Bodily*, 819 P.2d at 1269; *Hayes*, 400 N.W.2d at 246.

189 See *Lockeby*, 812 S.W.2d at 705; *Robin*, 646 So. 2d at 1033–34; *Bodily*, 819 P.2d at 1269; *Hayes*, 400 N.W.2d at 246.

190 *Lockeby*, 812 S.W.2d at 705.

191 *Robin*, 646 So. 2d at 1033–34.

192 See *Bodily*, 819 P.2d at 1269.

193 *Hayes*, 400 N.W.2d at 246.

194 See *Lockeby*, 812 S.W.2d at 705; *Robin*, 646 So. 2d at 1034; *Bodily*, 819 P.2d at 1269; *Hayes*, 400 N.W.2d at 246.

one specific moment of injury, the date of injury is still important for determining a date from when the employee deserves disability benefits. In *Dyson v. State Employees Group Benefits Program*, a clerk who developed pain in her feet from standing all day at a photocopier was awarded benefits under an accident claim. The Louisiana Court of Appeal created an identifiable moment of injury based on the claimant’s testimony that on a particular day she felt a sharp pain in her feet. Accordingly, the court held that her cumulative injury met the sudden requirement of an accident under the statute.

Similar to *Dyson*, the Illinois Appellate Court in *Castaneda v. Illinois Industrial Commission* created an identifiable moment of injury in order to award the claimant benefits under the accident definition. The court determined that the moment of injury for an employee suffering from carpal tunnel syndrome was the date that the claimant’s doctor first related her hand problems to her employment. Likewise, in *Barker v. Home-Crest Corp.*, the Tennessee Supreme Court concluded that the date of injury for an employee suffering from carpal tunnel syndrome was the date when the condition finally prevented her from performing her work. Finally, in *Condon v. Boeing Co.*, the Kansas Court of Appeals found an employee’s carpal tunnel syndrome to be a hybrid condition lying somewhere in between the strict definitions of accident and occupational disease. In order to award benefits, however, the court hesitatingly characterized the syndrome as an accident and found the date of injury to be the last date of work of the claimant.

Courts in CTD cases have justified the broadening of their interpretations of statutory accident requirements by reasoning that the purpose behind the workers’ compensation system—to compensate all victims of workplace injuries and disorders—is better served with a more expansive definition. The court in *Dyson v. State Employees Group Benefits Program*...
Group Benefits Program stated that denying workers who are "worn down by their work rather than immediately crippled by it" was inconsistent with the purpose of the state workers' compensation act.206 Similarly, in Condon, the court determined that the elements of the accident definition should not be construed in a strict or literal sense, but "in a manner designed to effectuate the purpose of the workers' compensation act that the employer bear the expense of accidental injury to a worker caused by the employment."207

Many courts are willing to manipulate statutory requirements for work-related accidents in order to compensate victims of occupational disorders who they feel deserve compensation.208 This broad judicial interpretation of accident requirements is evident in the above-described CTD cases. Now that courts have expanded their interpretations of statutory accident requirements for nontraditional work-place accidents such as CTDs, MCS claimants seeking workers' compensation may find this broad definition of accident to be more useful than a claim of occupational disease.209

VI. PROPOSAL: MCS SUFFERERS SHOULD PURSUE WORKERS' COMPENSATION CLAIMS UNDER THE STATUTORY DEFINITION OF ACCIDENT

Claimants in workers' compensation cases focusing on MCS may have a better chance of receiving benefits by classifying the syndrome as an accident rather than an occupational disease.210 MCS claimants can meet both the sudden and the unexpected requirements of statutory accident definitions.211 Once MCS claimants satisfy these elements, they have satisfied their burden of proving that their disorder arose out of and in the course of the work-place, and are entitled to workers' disability compensation.212

206 Dyson, 610 So. 2d at 955.
207 Condon, 903 P.2d at 777.
209 See, e.g., Lockeby, 812 S.W.2d at 705; Parks, 340 So. 2d at 281; Robin, 646 So. 2d at 1033–34; Bodily, 819 P.2d at 1269; see also infra Section VI.
210 See supra Section V.
211 See Larson, supra note 61, § 37.20; cf. Lockeby, 812 S.W.2d at 705 (holding that CTD claimant met sudden and unexpected requirements of accident definition).
212 See supra notes 69–74 and accompanying text.
MCS claimants meet the unexpected requirement of accident definitions because afflicted employees do not expect or foresee that they will develop the syndrome.\(^{213}\) Similar to Sandel where the court found that an employee's disorder was unexpected simply because nothing in the evidence could show that she had intentionally bent her elbow to cause an injury, courts in MCS compensation cases should find that claimants' disorders were unexpected because the employees did not intend to develop sensitivities to certain chemicals found in their work-places.\(^{214}\) In addition, like Schlup where the court determined that the unexpected element of an accident was met because the disabling effect of an employee's CTD was unforeseen, courts in MCS cases should find that the disabling effect of certain combinations of low-level chemicals on employees are also unforeseen.\(^{215}\)

In addition to satisfying the unexpected requirement of the accident definition, MCS claimants also can satisfy the sudden or time definiteness requirement.\(^{216}\) Although MCS claimants usually cannot identify a sudden or exact moment of chemical exposure, the disorder can be categorized as a series of micro-traumas.\(^{217}\) This tactic was employed in Robin where the court characterized an employee's severe back problems as a series of micro-traumas.\(^{218}\) Additionally, using the holding in Bodily that the time definiteness requirement can apply to either the cause or result of the injury, MCS claimants could satisfy the sudden requirement by applying it to the result of the injury.\(^{219}\) Although MCS often occurs gradually, it results in very definite symptoms including respiratory problems, gastrointestinal problems, and neurological disorders.\(^{220}\) Furthermore, under the Hayes v. A.M. Cohron, Inc. holding that accidents now include injuries resulting from repeated traumas ultimately producing disability, courts can also label MCS as an accident.\(^{221}\) MCS is the result of repeated traumatic


\(^{214}\) See Sandel, 317 N.W.2d at 915.

\(^{215}\) See Schlup, 479 N.W.2d at 445.

\(^{216}\) See supra notes 187–93 and accompanying text.


\(^{218}\) Robin, 646 So. 2d at 1033.

\(^{219}\) See Bodily, 819 P.2d at 1269.

\(^{220}\) See supra Section II.B.

\(^{221}\) See Hayes v. A.M. Cohron, Inc., 400 N.W.2d. 244, 245 (Neb. 1987).
exposure to environmental chemicals which ultimately produces totally disabling symptoms.222

When claimants are able to prove these two elements of the accident definition, courts usually find that the disorder arose out of their employment.223 Thus, if MCS sufferers can prove that MCS is an unexpected and sudden disorder that arose out of their employment, they have a good chance of receiving disability compensation.224

By claiming an occupational accident, workers also can avoid the more daunting requirements of the occupational disease category.225 MCS sufferers would no longer have to prove that the syndrome is not a common illness of everyday life.226 This belief that MCS is an ordinary disease of life was the main factor preventing recovery in Ruether v. State of Arizona and Weekley v. Industrial Commission, where the Minnesota Supreme Court and the Illinois Appeals Court stressed that MCS could be derived from non-work related sources.227 Additionally, claimants would not have the burden of proving that the syndrome is due to causes and conditions peculiar to a particular employment.228 This requirement prevented recovery in McCreary v. Industrial Commission of Arizona and Weekley, where the Arizona Court of Appeals and the Illinois Appeals Court, respectively, found that because office remodeling was not a particular and unavoidable risk stemming from the nature of the employees' engineering and secretarial duties, they did not suffer from compensable occupational diseases.229 By claiming that MCS is a work-place accident, employees can avoid the occupational disease standards that previously have prevented recovery for MCS, as well as take advantage of the broadening judicial interpretation of work-place accident under state workers' compensation statutes.230

222 See supra Section II.B.
223 See id.
224 See supra notes 69–74 and accompanying text.
225 See supra notes 84–89 and accompanying text.
226 See supra notes 76–79 and accompanying text.
228 See supra text accompanying notes 76–79.
230 See supra Sections IV and V.
A. Helpful Strategies for MCS Claimants Applying for Workers’ Compensation

Employees suffering from MCS who wish to apply for workers’ disability compensation should follow a number of steps in developing their case. First, they should start by claiming accident under their state’s workers’ compensation act. Next, claimants should visit several doctors (preferably not all clinical ecologists) who will diagnose them with MCS and testify both that the syndrome arose out of the workplace and that they are totally and permanently disabled by the disease. In addition, claimants should try to establish some specific instance of sensitization when they believe they were exposed to a chemical or a combination of chemicals which later triggered their reactions to everyday chemical exposures. Claimants can identify their moment of injury as a particular moment of acute exposure, as the first date of medical diagnosis, or the date that the chemical sensitivities finally prevented them from performing their work. Citing a specific instance of injury is not essential, but it is very helpful in establishing that an accident in fact occurred and in laying out a date from which the court can award disability compensation. Finally, claimants should rely on those accident cases in their state that interpret the unexpected and sudden accident requirements broadly. Using these techniques, MCS claimants may have a better chance of winning disability benefits than under a claim for occupational disease.

VI. CONCLUSION

With thousands of workplace disorders being discovered each year, the trend in workers’ compensation cases seems to be heading toward eliminating the technical constructions of accident and occupational disease and melding the two definitions into one standard for compen-

231 See supra Section V.
232 See supra notes 97–98 and accompanying text.
233 See supra notes 195–204 and accompanying text.
237 See supra notes 195–204 and accompanying text.
238 See supra Section V.
239 See id.
This trend enhances the purpose behind workers’ compensation of compensating employees for any loss of income caused by injurious conditions of their employment. As more and more courts stop differentiating between accidents and occupational diseases in these hybrid disorder cases, MCS claimants may not need to mold their cases to fit one definition or the other to be compensated. Until that time comes, however, employees seeking workers’ compensation for MCS should give the ever-broadening accident claim a try.

240 Dowse, supra note 179, at 164.
241 See Bennett, supra note 61, at 212.