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## NOTES

### TWELVE INJURED MEN: WHY INJURED JURORS SHOULD NOT RECEIVE WORKERS' COMPENSATION COVERAGE FROM THE COURTS

COREY BARON<sup>†</sup>

#### INTRODUCTION

In 1923, Mary Rogers dutifully completed the most honorable civic responsibility—jury duty.<sup>1</sup> Due to the late hour, the elevators in the courthouse were out of service, so she had to take the stairs.<sup>2</sup> When she descended the stairs, she fell and fractured her hip.<sup>3</sup> Thereafter, Ms. Rogers filed a workers' compensation claim.<sup>4</sup> It was the first time in United States history that an injured juror sought workers' compensation.<sup>5</sup> Unfortunately for Ms. Rogers, the Industrial Commission of Ohio denied her claim.<sup>6</sup> Ms. Rogers' case, however, went all the way to

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<sup>1</sup> *Indus. Comm'n v. Rogers*, 171 N.E. 35, 35 (Ohio 1930).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* In this Note, "Workers' Compensation" is used in lieu of "Workman's Compensation" and "Workmens' Compensation."

<sup>5</sup> See *Jochen v. County of Saginaw*, 110 N.W.2d 780, 781 (Mich. 1961) (describing the then-existing workers' compensation precedent regarding jurors across the United States); *Rogers v. Indus. Comm'n*, 27 Ohio N.P. (N.S.) 256, 257 (C.P. Hamilton County 1928) ("The question as to whether or not jurors are entitled to the benefits of the Workmen's Compensation Act seems never to have been before the courts of this state, nor of any of the states having workmen's compensation laws."), *aff'd sub nom. Indus. Comm'n v. Rogers*, 170 N.E. 600 (Ohio Ct. App. 1929), *aff'd*, 171 N.E. 35 (Ohio 1930).

<sup>6</sup> *Rogers*, 27 Ohio N.P. (N.S.) at 257.

the Supreme Court of Ohio, which granted her workers' compensation claim on the grounds that she was an employee of the county at the time she fell.<sup>7</sup>

Though the *Rogers* court set an initial precedent that jurors should receive workers' compensation,<sup>8</sup> other courts have by and large reached the contrary conclusion. That is to say, most courts presented with this issue found that jurors were not eligible for workers' compensation.<sup>9</sup> One such court felt the answer was so obvious that it wrote a particularly memorable opinion—composed of only four numbered points.<sup>10</sup>

There are, however, a minority of courts that reached the same conclusion as the *Rogers* court.<sup>11</sup> The opposing conclusions exist because workers' compensation claims are based on individual state workers' compensation statutes, which have different statutory structures and applicable common laws.<sup>12</sup> In

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<sup>7</sup> See *Rogers*, 171 N.E. at 36–37 (holding that Mary attained employment by virtue of appointment for hire); see also *Jochen*, 110 N.W.2d at 781.

<sup>8</sup> See *Rogers*, 171 N.E. at 36–37.

<sup>9</sup> See, e.g., *Metropolitan Dade County v. Glassman*, 341 So. 2d 995, 996 (Fla. 1976) (“In holding respondent ineligible for workmen’s compensation benefits, we align ourselves with the weight of authority in other jurisdictions.”); *Jaskoviak v. Indus. Comm’n*, 785 N.E.2d 1026, 1029 (Ill. App. Ct. 2003) (“The majority of cases from other jurisdictions have answered this question by deciding that a juror is not an employee.”); *Wilson v. Georgetown County*, 447 S.E.2d 841, 842 (S.C. 1994) (“The majority rule is that a juror is not within the scope of workers’ compensation laws.”).

<sup>10</sup> The Supreme Court of New Mexico wrote its opinion with incredible brevity. The entire opinion follows:

- {1} The question for decision: Is a juror who suffers an accidental injury while in the performance of his duties as such entitled to an award of compensation for his injury under the provisions of our Workmen’s Compensation Law, 1953 Comp. § 59–10–1 et seq.?
- {2} The learned trial judge said nay. So say we.
- {3} The judgment will be affirmed.
- {4} It is so ordered.

*Seward v. County of Bernalillo*, 294 P.2d 625, 625 (N.M. 1956) (internal citation omitted).

<sup>11</sup> See, e.g., *Yount v. Boundary County*, 796 P.2d 516, 526–27 (Idaho 1990); *Holmgren v. N.D. Workers Comp. Bureau*, 455 N.W.2d 200, 206 (N.D. 1990); *Bolin v. Kitsap County*, 785 P.2d 805, 808 (Wash. 1990).

<sup>12</sup> Robert A. Naragon, Note, *Jurors as Nonvoluntary Employees Under Workmen’s Compensation Law*, 74 DICK. L. REV. 334, 335 (1970); David B. Torrey & Lawrence D. McIntyre, *Recent Developments in Workers’ Compensation and Employers’ Liability Law*, 51 TORT TRIAL & INS. PRAC. L.J. 749, 750 (2016). *Bolin* also acknowledged this legal nuance. See *Bolin*, 785 P.2d at 807 (“This court must interpret Washington’s statute, not those of other states. Under the language, statutory scheme, and cases construing our act, we conclude that jurors are employees.”) (emphasis added).

fact, some states require all employers and employees to participate in their workers' compensation programs, some states simply grant eligible employers and employees the option to participate in their workers' compensation programs, and some states both require designated classes of employers and employees to participate and allow other eligible classes to participate at their discretion.<sup>13</sup> As a result, "the direct effect of [workers' compensation] laws and case precedents outside of their state of origin is limited."<sup>14</sup> Simply put, because the state statutes and precedents vary, the legal conclusions should vary too.

Those differences yielded inconsistent holdings as to whether injuries sustained in the course of jury duty merit workers' compensation coverage. Though claims regarding such injuries are a unique subset of workers' compensation cases, individuals have brought a variety of workers' compensation claims for injuries sustained in the course of jury service. Some examples include trampling by a crowd exiting a courthouse elevator,<sup>15</sup> falling out of the jury box,<sup>16</sup> enduring a car accident en route home from jury service,<sup>17</sup> and even contracting pneumonia during the deliberation process.<sup>18</sup>

Though one state, Puerto Rico, and the federal government specifically addressed this issue in their statutes,<sup>19</sup> claimants in states without such express statutory provisions had to litigate the issue.<sup>20</sup> Consequently, this body of case law has yielded four different holdings: (1) jurors are eligible for coverage because of how the statutes have been interpreted,<sup>21</sup> (2) public policy

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<sup>13</sup> Naragon, *supra* note 12, at 335.

<sup>14</sup> *Id.*; Torrey & McIntyre, *supra* note 12, at 750; *see also* *Bolin*, 785 P.2d at 807.

<sup>15</sup> Metropolitan Dade County v. Glassman, 341 So. 2d 995, 996 (Fla. 1976).

<sup>16</sup> Waggener v. County of Los Angeles, 46 Cal. Rptr. 2d 141, 142 (Cal. Ct. App. 1995).

<sup>17</sup> *Bolin*, 785 P.2d at 805.

<sup>18</sup> Bd. of Comm'rs v. Evans, 60 P.2d 225, 226 (Colo. 1936). The juror alleged that he contracted pneumonia because, after the jury failed to reach a verdict by midnight, he was compelled to lodge at the county jail on a small mattress absent blankets. *Id.*

<sup>19</sup> 5 U.S.C.A. § 8101 (West 2014); MD. CODE ANN., LAB. & EMPL. § 9-402 (West 2017); P.R. LAWS ANN. tit. 11, § 2 (2017).

<sup>20</sup> *Infra* Parts II and III.

<sup>21</sup> *See, e.g.*, Holmgren v. N.D. Workers Comp. Bureau, 455 N.W.2d 200, 206 (N.D. 1990).

requires jurors' eligibility,<sup>22</sup> (3) jurors are not eligible for coverage because of how the statutes have been interpreted,<sup>23</sup> and (4) public policy precludes jurors' eligibility.<sup>24</sup>

New York, however, has not addressed whether jurors are eligible for workers' compensation through the court system.<sup>25</sup> A case on this issue would be one of first impression in New York. Therefore, one cannot predict how New York courts would rule on the issue, because on the one hand, the courts could strictly follow the statute's language and conclude that jurors are not eligible for coverage.<sup>26</sup> On the other hand, the policy of broadly and liberally applying New York's Workers' Compensation Law<sup>27</sup> could lead New York courts to, like other courts,<sup>28</sup> rule that jurors should receive coverage.<sup>29</sup>

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<sup>22</sup> See, e.g., *Waggener v. County of Los Angeles*, 46 Cal. Rptr. 2d 141, 144 (Cal. Ct. App. 1995); *Yount v. Boundary County*, 796 P.2d 516, 526–27 (Idaho 1990).

<sup>23</sup> See, e.g., *Jaskoviak v. Indus. Comm'n*, 785 N.E.2d 1026, 1028–30 (Ill. App. Ct. 2003).

<sup>24</sup> See, e.g., *Metropolitan Dade County v. Glassman*, 341 So. 2d 995, 996 (Fla. 1976).

<sup>25</sup> On the other hand, New York's Workers' Compensation Board has addressed this issue twice. N.Y. State Dep't of Agric. & Mkts, 2006 WL 2848881, at \*3 (N.Y. Workers' Comp. Bd. Sept. 22, 2006); *Orange Cty. Home & Infirmary*, 1988 WL 189663, at \*1 (N.Y. Workers' Comp. Bd. June 6, 1988). For different reasons, both Workers' Compensation Boards ruled that the claimant-jurors were ineligible for workers compensation coverage. Compare *N.Y. State Dep't of Agric. & Mkts*, 2006 WL 2848881, at \*3 (holding that "as a matter of public policy New York State does not allow jurors to be employees of a governmental entity whose cases they may be judging"), with *Orange Cty. Home & Infirmary*, 1988 WL 189663, at \*1 (holding that a jury service "is in a manner similar to that of a militiaman serving the State as neither have certain rights and privileges of other working men and women, such as the choice as to work or not according to their own free will") (internal quotations omitted).

<sup>26</sup> The statute provides coverage for specific groups of employment and occupational diseases. N.Y. WORKERS' COMP. LAW § 3 (McKinney 2017). Group 17, which lists the employees that municipalities must cover, does not list jurors. *Id.* Jurors could, however, fit in to Group 19, which grants municipalities the option to cover employees not listed in Group 17. *Id.* Select jurors could also arguably fit in to Group 16, which provides workers' compensation coverage to those under "employment by the state" when the state pays wages pursuant to employment. *Id.*

<sup>27</sup> *E.g.*, *Neacosia v. N.Y. Power Auth.*, 649 N.E.2d 1188, 1191, 85 N.Y.2d 471, 476, 626 N.Y.S.2d 44, 47 (N.Y. 1995); *Lemon v. N.Y.C. Transit Auth.*, 528 N.E.2d 1205, 1207, 72 N.Y.2d 324, 326, 532 N.Y.S.2d 732, 734 (N.Y. 1988); *Smith v. Tompkins Cty. Courthouse*, 459 N.E.2d 155, 156, 60 N.Y.2d 939, 941, 471 N.Y.S.2d 46, 47 (N.Y. 1983).

<sup>28</sup> See *Waggener*, 46 Cal. Rptr. 2d at 144 (noting that covering jurors is "wholly consistent with the broad purposes of the Act . . .") (emphasis added); *Yount*, 796 P.2d at 522 (noting that workers' compensation law was to be "liberally construed" and holding the court's task was, in considering whether jurors should be covered,

This Note argues that the legislature should add a provision to New York's Workers' Compensation Act that expressly precludes jurors from coverage.<sup>30</sup> Such a provision would comport with the policy underlying the statute, the statute's structure, and the statute's language. Moreover, that legislative provision would prevent the court from wasting the considerable time and expense of grappling with other courts' inconsistent interpretations of workers' compensation statutes and their underlying policies.<sup>31</sup> First, Part I of this Note provides an overview of the workers' compensation law and explores the policies underlying the advent of workers' compensation statutes. Then, Part II surveys and presents the six methods for determining whether jurors are entitled to workers' compensation coverage. Finally, Part III discusses the need for clarification by the legislature, while Part IV of this Note evaluates the suggestion for an additional statutory clause that explicitly precludes jurors from eligibility for workers' compensation.

#### I. THE FUNCTION OF WORKERS' COMPENSATION

Workers' compensation is a statutory system that provides comprehensive medical and financial benefits to employees who suffer work-related injuries.<sup>32</sup> The system benefits both employers and employees; it grants injured workers medical coverage and scheduled income benefits—regardless of their fault in causing their injuries—and provides employers with immunity from litigation and, therefore, the threat of compensatory and

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“to ascertain if the provisions of the [workers' compensation] statute[] are capable of being so interpreted . . .”).

<sup>29</sup> This Note will discuss in greater detail how some courts, including New York, interpret workers' compensation statutes broadly, which can lead to finding coverage for jurors in the interest of that policy. *See infra* Parts III and IV.

<sup>30</sup> This Note does not, however, engage in a philosophical assessment as to whether jurors should otherwise receive remuneration for injuries they sustain in the course of performing jury duty. This Note's discussion is strictly limited to the concept of providing jurors with Workers' Compensation coverage.

<sup>31</sup> *See* Torrey & McIntyre, *supra* note 12, at 750 (explaining that, in the context of Workers' Compensation, state courts “often look to authority from other states” when “no precedent of the jurisdiction is determinative”). *See* Part III for an explanation of the states' inconsistent jurisprudence.

<sup>32</sup> Joan T.A. Gabel et al., *The New Relationship Between Injured Worker and Employer: An Opportunity for Restructuring the System*, 35 AM. BUS. L.J. 403, 403 (1998).

punitive damages.<sup>33</sup> The system creates a relationship between employers and employees such that “benefits are shared in a way that maximizes their joint profits . . . .”<sup>34</sup> Put simply, the combination of the employers’ strict liability for making Worker’s Compensation payments and the employees’ limited ability to collect damages act as a prearranged settlement for work-related injury claims.<sup>35</sup> The system operates on the basis that the costs of the system will pass to the consumer.<sup>36</sup>

Workers’ compensation statutes resulted from the plights faced by nineteenth century workers. Prior to the advent of workers’ compensation, employees often refrained from testifying against their employers because they feared retaliatory termination.<sup>37</sup> Meanwhile, the typical legal defenses of contributory negligence, negligence of fellow employees, and assumption of risk shielded employers from adverse judgments.<sup>38</sup> By the end of the nineteenth century, however, the substantial increase in work-related accidents, an unfortunate byproduct of industrial development, yielded a demand for an efficient mechanism to compensate injured workers.<sup>39</sup> That demand caught the attention of state legislatures, which led to the adoption of workers’ compensation statutes across the United States.<sup>40</sup> As long as workers’ compensation statutes remain in effect, they reflect the need to protect workers engaged in dangerous work.

## II. THE SIX RATIONALES FOR CONCLUDING WHETHER A JUROR IS ELIGIBLE FOR WORKERS’ COMPENSATION

Barry Stevens was summoned to jury duty. He sat through voir dire and was selected for trial. Unfortunately, on the first day of the trial, Barry Stevens tripped, fell out of the jury box,

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<sup>33</sup> *Id.* at 403; Torrey & McIntyre, *supra* note 12, at 753.

<sup>34</sup> Gabel et al., *supra* note 32, at 406–07.

<sup>35</sup> *Id.* at 407; *see* Torrey & McIntyre, *supra* note 12, at 753.

<sup>36</sup> Roger C. Henderson, *Should Workmen’s Compensation Be Extended to Nonoccupational Injuries?*, 48 TEX. L. REV. 117, 119 (1969); Eugene Wambaugh, *Workmen’s Compensation Acts: Their Theory and Their Constitutionality*, 25 HARV. L. REV. 129, 130 (1911); Gabel et al., *supra* note 32, at 406.

<sup>37</sup> Gabel et al., *supra* note 32, at 405.

<sup>38</sup> Richard A. Epstein, *The Historical Origins and Economic Structure of Workers’ Compensation Law*, 16 GA. L. REV. 775, 775–76 (1982); Gabel et al., *supra* note 32, at 405–406.

<sup>39</sup> Epstein, *supra* note 38, at 775; Gabel et al., *supra* note 32, at 406.

<sup>40</sup> Epstein, *supra* note 38, at 776; Gabel et al., *supra* note 32, at 406.

and broke his wrist when the court adjourned for lunch.<sup>41</sup> Barry Stevens' ability to reap the benefits of workers' compensation depends on the approach taken by the state in which he fell.<sup>42</sup>

The divergence in case law regarding jurors' eligibility for workers' compensation benefits resulted from conflicting interpretations of workers' compensation statutes and their underlying policies. In the Sections that follow, this Note explores these different interpretations and policies as well as express statutory provisions that address jurors.

A. *Statutory Mandates That Address Jurors' Eligibility To Receive Workers' Compensation*

The first approach is to expressly address jurors in workers' compensation statutes. Only two workers' compensation statutes expressly provide that jurors are eligible for workers' compensation. First, Puerto Rico's workers' compensation statute specifies that jurors have workers' compensation coverage "from the time they leave their homes until they return to them, whether they have served as jurors or not."<sup>43</sup> Second, Maryland's workers' compensation statute also requires that jurors receive coverage.<sup>44</sup>

The U.S. federal statute operates in the same manner. Indeed, Title 5 of the United States Code contains the federal equivalent of a workers' compensation statute; it provides coverage for federal employees.<sup>45</sup> Much like Puerto Rico's and Maryland's statutes, the Code's definitions section states that each individual "serving as a petit or grand juror" is within the

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<sup>41</sup> I will use this hypothetical throughout this Note to illustrate the approaches to and results from injuries sustained by jurors.

<sup>42</sup> For the discussion of how this issue is handled in federal courts, see *infra* Part II.A.

<sup>43</sup> P.R. LAWS ANN. tit. 11, § 2 (2017).

<sup>44</sup> MD. CODE ANN., LAB. & EMPL. § 9-402(b) (West 2017) ("The State shall secure compensation for jurors by maintaining insurance with the Chesapeake Employers' Insurance Company and paying to the Company the premiums set by the Board for the Company as necessary to provide compensation for jurors."). Interestingly, Maryland passed that statute after the Court of Appeals of Maryland, in *Lockerman v. Prince George's County*, held that jurors were not eligible for coverage. 377 A.2d 1177, 1183–84 (Md. 1977).

<sup>45</sup> "The United States shall pay compensation as specified by this subchapter for the disability or death of an *employee* resulting from personal injury sustained while in the performance of his duty . . ." 5 U.S.C. § 8102 (2012) (emphasis added).



definition of “employee.”<sup>46</sup> Therefore, if Barry Stevens sustained his injury in any of those jurisdictions, he would obtain workers’ compensation benefits.

### B. *Statutory Interpretation*

The second approach to this issue is to consider and interpret the general language of the relevant statute. This is the courts’ most common approach to the issue.<sup>47</sup> However, despite the use of the same method, the state courts have come out on both sides. This further muddies the water and, unfortunately, makes uniformity nearly impossible.

#### 1. Finding Jurors Ineligible for Workers’ Compensation

By and large, courts construed workers’ compensation statutes to conclude jurors were ineligible for workers’ compensation.<sup>48</sup> Some courts held so because jurors did not fit the statutory definition of “employee.”<sup>49</sup> Accordingly, courts often found that jurors were not employees because there was no contract for hire between jurors and the court system.<sup>50</sup> Indeed, the Louisiana Court of Appeals held that “[e]mployment presupposes an agreement entered into between two parties. In the relationship between a juror and the parish there is no agreement.”<sup>51</sup> By the same token, the Supreme Court of Colorado

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<sup>46</sup> 5 U.S.C. § 8101 (2012).

<sup>47</sup> *See, e.g., Hicks v. Guilford County*, 148 S.E.2d 240, 242–44 (N.C. 1966); *Holmgren v. N.D. Workers Comp. Bureau*, 455 N.W.2d 200, 206 (N.D. 1990); *Bolin v. Kitsap County*, 785 P.2d 805, 805–06 (Wash. 1990).

<sup>48</sup> *See, e.g., Bd. of Comm’rs v. Evans*, 60 P.2d 225, 227 (Colo. 1936); *Jaskoviak v. Indus. Comm’n*, 785 N.E.2d 1026, 1030 (Ill. App. Ct. 2003); *Hicks*, 148 S.E.2d at 244.

<sup>49</sup> *See, e.g., Evans*, 60 P.2d at 227 (noting that jurors are not specified in the statute in the definition of employee); *Silagy v. State*, 253 A.2d 478, 479 (N.J. Super. Ct. App. Div. 1969) (discussing lack of “broad coverage” provided in statute by virtue of the statutory definition of “employee”); *Hicks*, 148 S.E.2d at 244 (finding that the workers’ compensation did not apply to injuries sustained by jurors because they did not meet definition of employee).

<sup>50</sup> *See, e.g., Evans*, 60 P.2d at 226 (“We cannot think the status of a juror is that of an employee serving, to quote the statute, by ‘appointment or contract of hire, express or implied.’ ”); *Jaskoviak*, 785 N.E.2d at 1028–29 (noting that the absence of an employment agreement shows that a juror is not an employee); *Lockerman v. Prince George’s County*, 377 A.2d 1177, 1181 (Md. 1977) (holding that “the normal contractual incidents of the employer-employee relationship are required” for any person to be covered under the Workers’ Compensation Act); *Hicks*, 148 S.E.2d at 244 (noting that juror’s services, are not “obtained or defined” by a contract of hire).

<sup>51</sup> *Jeansonne v. Parish of E. Baton Rouge*, 11663 (La. App. 1 Cir. 12/28/77); 354 So. 2d 619, 620. In Louisiana, the “parish” is the equivalent of the county. *See*

concluded that jurors were not eligible for workers' compensation because "[t]he county does not negotiate with a citizen for his services as a juror, nor does the citizen apply to the county for such preferment."<sup>52</sup> Other courts have echoed that sentiment.<sup>53</sup> Moreover, courts often find that jurors are not employees despite claimants' arguments that jurors are employees by virtue of "appointment for hire."<sup>54</sup>

Thus, if Barry Stevens were summoned to jury duty in any of the preceding jurisdictions, he would not receive workers' compensation coverage for his injury. His denial would be based on any combination of the following: He would not meet the statutory definition of an employee; he would not have a contract underlying his service; he would not have attained the position through appointment; he could not have applied for the position; and he could not have negotiated his compensation.

## 2. Finding Jurors Eligible for Workers' Compensation

In three instances, courts have found, through construing their state's workers compensation statutes, that jurors are eligible for coverage.<sup>55</sup> First, the Supreme Court of Ohio found that its statute covered jurors when it held that jurors were "appointed . . . for hire," even though jurors could not turn down appointment, because the counties compensated jurors for their services.<sup>56</sup> Notably, the Ohio court found that jurors were not within the "official of the state or of the county" exception to that

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*Louisiana Supreme Court History*, LOUISIANA SUPREME COURT, [http://www.lasc.org/about\\_the\\_court/history.asp](http://www.lasc.org/about_the_court/history.asp) (last visited Mar. 24, 2018).

<sup>52</sup> *Evans*, 60 P.2d at 226.

<sup>53</sup> See *O'Malley's Case*, 281 N.E.2d 277, 279 (Mass. 1972); *Hicks*, 148 S.E.2d at 244.

<sup>54</sup> See, e.g., *Evans*, 60 P.2d at 227 (finding that "in no conceivable sense" are jurors appointed for hire); *Jaskoviak*, 785 N.E.2d at 1029 (deciding against claimant's argument that placement on the jury commission's jury list amounted to an appointment for hire); *Hicks*, 148 S.E.2d at 244 (noting that the juror was neither "appointed nor elected to his position of duty"). For an explanation of "appointment for hire" see *infra* Part III.A.

<sup>55</sup> See *Holmgren v. N.D. Workers Comp. Bureau*, 455 N.W.2d 200, 206 (N.D. 1990); *Indus. Comm'n v. Rogers*, 171 N.E. 35, 37 (Ohio 1930); *Bolin v. Kitsap County*, 785 P.2d 805, 807–08 (Wash. 1990).

<sup>56</sup> See *Rogers*, 171 N.E. at 36–37 ("[T]he fact that the juror has no option to decline such appointment [does not] render the appointment any less one for hire, since theoretically the consideration provided by law for the service is adequate.").

state's workers' compensation coverage,<sup>57</sup> because jurors' decisions were not final and a judge could refuse to enter the jury's verdict.<sup>58</sup>

Second, the Supreme Court of North Dakota interpreted its workers' compensation statute to determine that its statute covered jurors. That court noted that the state's workers' compensation statute included "appointed officials" in its definition of employees.<sup>59</sup> The court then applied the state's common-law test for determining whether individuals were "appointed officials,"<sup>60</sup> which necessitated an analysis of whether jurors possessed the traits of "officials of the state."<sup>61</sup> The court concluded that jurors were eligible for workers' compensation because jurors possessed the traits of "state officials," which meant they were "appointed officials" within the statutory definition of "employee."<sup>62</sup>

Third, the Supreme Court of Washington also interpreted its statute to determine its jurors were eligible for workers' compensation.<sup>63</sup> The court noted that the Washington workers' compensation statute defined "employee" as including "officers of the state."<sup>64</sup> Moreover, the statute only listed the *excluded* categories of employment.<sup>65</sup> Accordingly, the court reasoned that jurors could be employees because they were not on the list of exclusions.<sup>66</sup> However, before it found that jurors could receive coverage, the court answered the remaining questions of whether they were "employees," despite the involuntary nature of jury

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<sup>57</sup> *Id.* at 35–36.

<sup>58</sup> *Id.* at 36.

<sup>59</sup> *Holmgren*, 455 N.W.2d at 202 (interpreting N.D. CENT. CODE ANN. § 65–01–02 (West 2015)).

<sup>60</sup> The criteria for a finding that individuals are public officials required that such people achieved their positions by election or appointment, were compensated from public funds, and performed statutorily defined duties, of a continuous nature, which related to the administration of state government. *Id.* at 202.

<sup>61</sup> The court evaluated jurors' "importance, dignity, and independence," in addition to the common-law "public officials" test, out of respect for the state attorney general after the attorney general issued a report stating that those characteristics are inherent in public officials. *Id.* at 204 (internal quotations omitted).

<sup>62</sup> *See id.* at 205 (concluding that jurors are public officials in the context of workers' compensation because "juror[s] fulfill[] all of the *Jorgenson* requirements" and satisfy the "importance, dignity and independence test . . .").

<sup>63</sup> *Bolin v. Kitsap County*, 785 P.2d 805, 805 (Wash. 1990).

<sup>64</sup> *Id.*; WASH. REV. CODE ANN. § 51.08.185 (West 2017).

<sup>65</sup> *Bolin*, 785 P.2d at 806; WASH. REV. CODE ANN. § 51.12.020 (West 2017).

<sup>66</sup> *Bolin*, 785 P.2d at 806.

service,<sup>67</sup> and whether the county was the jurors' "employer."<sup>68</sup> The court recognized the involuntary nature of jury service, but stated Washington precedent dictated that even involuntary employees were eligible for workers' compensation,<sup>69</sup> and found that the county was the employer of jurors "by virtue of [the jurors'] responsibility to the superior court."<sup>70</sup> Consequently, the court held that Washington jurors were eligible for workers' compensation coverage.<sup>71</sup>

Therefore, if Barry Stevens was summoned to jury duty in Ohio, North Dakota, or Washington, he would be eligible to receive workers' compensation coverage for his injury. His eligibility would be based on any combination of the following: his position as a juror resulted from an "appointment for hire," the county can be the "employer" of jurors, his position is not one that falls within Ohio's "official of the state or county" statutory exception, and at the same time, he met North Dakota's qualifications for "state officials."

### 3. Public Policy and Finding Jurors Eligible for Workers' Compensation

In *Waggener v. County of Los Angeles*,<sup>72</sup> public policy was the exclusive justification for finding that jurors were eligible for workers' compensation. That case concerned an individual who, while serving jury duty in a criminal trial, slipped and fell out of the jury box. When the injured juror brought negligence and premises liability claims against the county, the county sought dismissal on the grounds that the Workers' Compensation Act "provide[d] the sole and exclusive forum for redress of plaintiff's complaints against the County."<sup>73</sup>

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 807.

<sup>69</sup> *Id.* at 806.

<sup>70</sup> *Id.* at 807.

<sup>71</sup> *Id.* at 805, 807–08. The court then engaged in further statutory interpretation to determine whether the specific injury to the plaintiff, a vehicle accident which took place on the plaintiff's commute from jury duty, met the statutory requirement that the injury take place within the course of employment. The court found that, because the statute obligated the county to pay for jurors' transportation, the accident was within the scope of employment. *Id.* at 808.

<sup>72</sup> 46 Cal. Rptr. 2d 141, 142 (Cal. Ct. App. 1995).

<sup>73</sup> *Id.*

The court began its analysis by noting that there was ambiguity as to whether the legislature meant for the California Workers' Compensation Act to cover jurors.<sup>74</sup> Next, the court acknowledged the existing case law on the issue and that the authority overwhelmingly found that jurors were not eligible for workers' compensation.<sup>75</sup> The court noted, however, that the overwhelming majority reached that conclusion because the jurors' relationships to their counties "d[id] not fit *squarely* within the common law definition of the employment relationship."<sup>76</sup> The court then stated that it would not engage in "rigid contractual analysis,"<sup>77</sup> and declared that "an 'employment' relationship sufficient to bring the Act into play cannot be determined simply from technical contractual or common law conceptions of employment but must instead be resolved by reference to the history and fundamental purposes underlying the [workers' compensation] Act."<sup>78</sup>

The *Waggener* court stated that a holding contrary to the weight of authority, providing coverage to jurors, was consistent with the purpose of the Act—"to protect individuals against the special risks of employment."<sup>79</sup> Likewise, the court said the broad terms and definitions of the Act were consistent with an intent for "comprehensive coverage."<sup>80</sup> In addition, the court explained, in detail, the lengths to which jurors go to perform jury service for the county and even pointed out that "the common term for describing the work of a citizen called to sit on a jury is 'jury service.'"<sup>81</sup> Finally, the court's conclusion

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<sup>74</sup> See *id.* at 143 ("We are therefore called upon to determine whether a juror is an employee for purposes of the Act in the absence of a specific pronouncement by the Legislature.").

<sup>75</sup> See *id.* ("The foregoing cases uniformly conclude that jurors are not employees, and are not subject to the provisions of their states' respective workers' compensation laws . . .").

<sup>76</sup> *Id.* (emphasis added).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* (quoting *Laeng v. Workmen's Comp. Appeals Bd.*, 494 P.2d 1, 4-5 (Cal. 1972)).

<sup>79</sup> *Id.*

<sup>80</sup> See *id.* at 144 ("The Act intends comprehensive coverage of injuries in employment. It accomplishes this goal by defining 'employment' broadly . . .").

<sup>81</sup> See *id.* (explaining that jurors are subject to county control over almost every aspect of their environment and noting that such control can be, in the case of sequestration, "extreme").

exemplified its belief that jurors should, as a matter of policy, receive workers' compensation benefits for the service they perform:

In sum, it is wholly consistent with the broad *purposes* of the Act to place upon the County, which *benefits* from the unique and invaluable services provided by jurors, the responsibility to insure against injuries which they may sustain *in rendering such services to the County*. Consequently, we conclude that a juror who is injured in the course of performing his or her jury service is an employee for *purposes* of the Act.<sup>82</sup>

In like manner, other courts have concluded that jurors should receive workers' compensation coverage based on public policy.<sup>83</sup> For example, in a decision reminiscent of *Waggener*, the Supreme Court of Idaho noted the ever-present potential for juror injury and stated that "anyone who ponders even shortly" on the possibility of jury service would "feel greatly relieved" to know that injured jurors are eligible for workers' compensation.<sup>84</sup> Accordingly, the Supreme Court of Idaho concluded that it would be "far better" for jurors to receive assurance that counties would pay for medical expenses arising out of their service.<sup>85</sup> In the same vein, the Supreme Court of Washington stated that the workers' compensation statute was "better served" by providing coverage to jurors.<sup>86</sup>

Therefore, if Barry Stevens sustained his injury in California, Idaho, or Washington, he would receive workers' compensation coverage and, based on those courts' position towards jurors, maybe even a thank you for his service.

#### 4. Public Policy and Finding Jurors Ineligible for Workers' Compensation

In addition to, or in lieu of, statutory interpretation, courts have relied on policy considerations to find that jurors are not eligible for workers' compensation. One such policy is that jurors cannot be eligible for workers' compensation benefits because their sole function is to perform a civic duty. Several courts

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<sup>82</sup> *Id.* (emphasis added).

<sup>83</sup> See *Yount v. Boundary County*, 796 P.2d 516, 526–27 (Idaho 1990); *Bolin v. Kitsap County*, 785 P.2d 805, 807–08 (Wash. 1990).

<sup>84</sup> *Yount*, 796 P.2d at 526.

<sup>85</sup> *Id.*

<sup>86</sup> *Bolin*, 785 P.2d at 807.

subscribe to this theory.<sup>87</sup> In fact, the Supreme Court of Colorado typified this perspective when it explained the function of jury service:

When a citizen is summoned to jury service he responds to process running in the name of the people, which imports such dignity that it commands respect, and is of such force that none disobeys. By the majesty of the law, therefore . . . he becomes a juror . . . . He functions as part of the judicial machinery, and is as indispensable to its ongoing as is the judge of the court where he serves.<sup>88</sup>

Thus, several courts respect this obligation and, based on both its public and civic nature, treat it as a special circumstance wholly separate from employment.

Courts have also relied on another policy justification for precluding jurors from workers' compensation coverage: jurors, unlike the employees typically afforded workers' compensation coverage, do not volunteer to serve. Indeed, several courts held that jury service was distinct from employment because jury service was mandated by law, whereas workers' compensation was premised on voluntary consent to work.<sup>89</sup> Therefore, if Barry Stevens sustained his injury in a jurisdiction holding that jurors are distinct from employees because jurors perform a civic duty or are compelled to serve, he would not receive workers' compensation benefits.

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<sup>87</sup> See, e.g., *Bd. of Comm'rs v. Evans*, 60 P.2d 225, 227 (Colo. 1936) ("The *duty* to serve as a juryman is an obligation to the community in which he resides . . .") (emphasis added); *Metropolitan Dade County v. Glassman*, 341 So. 2d 995, 996 (Fla. 1976) (distinguishing jurors from county employees because jurors answer a calling to perform their "duty").

<sup>88</sup> *Evans*, 60 P.2d at 226–27. The Supreme Court of Massachusetts also surmised this theory quite well: "Jurors do not constitute an independent organization or body within the judicial system. They perform legal functions imposed upon them in the manner prescribed by law. (T)hey are an appendage, a branch, an integral part of the court acting under the authority of the court." *O'Malley's Case*, 281 N.E.2d 277, 279 (Mass. 1972) (internal quotations omitted).

<sup>89</sup> See, e.g., *Jaskoviak v. Indus. Comm'n*, 785 N.E.2d 1026, 1029 (Ill. App. Ct. 2003) (noting that the claimant could not choose to decline jury duty); *Jeansonne v. Parish of E. Baton Rouge*, 11663 (La. App. 1 Cir. 12/28/77); 354 So. 2d 619, 620 (noting that jurors are "bound by statute to perform"); *Lockerman v. Prince George's County*, 377 A.2d 1177, 1182 (Md. 1977) ("It is plain that voluntary assent is wholly lacking here because a citizen summoned for jury duty simply cannot decline to appear and serve."); *Hicks v. Guilford County*, 148 S.E.2d 240, 243 (N.C. 1966) (analogizing jurors to witnesses testifying under subpoena).

### III. INCONSISTENCIES IN JURISPRUDENCE

When these six approaches are taken together, there are clear inconsistencies in the courts' rationales and conclusions. Those inconsistencies are presented in this portion of the Note for the purpose of illustrating why the issue should not be left to the courts. What follows are examples of courts reaching opposite conclusions even though they took similar approaches, reviewed similar facts, interpreted similar statutory language, applied similar rationales, and aimed to implement similar policies.

#### A. *Whether Jurors Are Appointed*

Courts have provided inconsistent conclusions as to whether jurors are "appointed" to serve. Several courts found that jurors are not appointed; rather, they perform a civic duty.<sup>90</sup> In fact, the Supreme Court of Colorado said that "[i]n no conceivable sense" are jurors appointed.<sup>91</sup> However, several other courts concluded that jurors are appointed.<sup>92</sup> In holding the latter, the Ohio Supreme Court even specified the process by which jurors were appointed: Candidates were selected by a jury commission to be placed in a wheel; they were drawn out of the jury wheel as needed; and "when drawn, their selection by the jury commission bec[a]me[] a *definite appointment* . . . ."<sup>93</sup> Similarly, when the Supreme Court of Idaho held that jurors were appointed for hire, it noted that Idaho had an "almost identical . . . process" to the

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<sup>90</sup> See *Evans*, 60 P.2d at 227 (stating that jury service is a duty stemming from an obligation to the jurors' community); *Jaskoviak*, 785 N.E.2d at 1029 (rejecting claimant's argument that placement on the jury commission's jury list amounted to an appointment for hire); *Hicks*, 148 S.E.2d at 244 (noting that the juror was "neither appointed nor elected to his position of duty").

<sup>91</sup> *Evans*, 60 P.2d at 227.

<sup>92</sup> *Holmgren v. N.D. Workers Comp. Bureau*, 455 N.W.2d 200, 203 (N.D. 1990); see also *Waggener v. County of Los Angeles*, 46 Cal. Rptr. 2d 141, 142, 144 (Cal. Ct. App. 1995) (citing CAL. LAB. CODE § 3351 (West 2018)) (noting that the statutory definition of "employee" includes "appointed paid public officers" before concluding that jurors were employees).

<sup>93</sup> *Indus. Comm'n v. Rogers*, 171 N.E. 35, 36 (Ohio 1930) (emphasis added).



one discussed in *Rogers*.<sup>94</sup> Likewise, the Supreme Court of North Dakota reasoned that jurors were appointed through both the selection process and the required “jurors’ oaths.”<sup>95</sup>

*B. Extent of Control Exercised over Jurors*

Courts have relied on both jurors’ autonomy and the extent to which jurors are subject to the control of others—typically the court and the county—to both grant and deny workers’ compensation coverage. For example, some courts found that jurors’ inability to decline service bolstered the conclusion that jurors should not receive workers’ compensation. Those courts noted that jurors are “bound by statute to perform,”<sup>96</sup> that citizens “summoned for jury duty simply cannot decline to appear and serve,”<sup>97</sup> and even analogized jurors to witnesses testifying under subpoena.<sup>98</sup> The Supreme Court of Washington, however, disregarded that notion.<sup>99</sup> Indeed, it held that “[t]he view that jurors are not covered because their employment is involuntary cannot be reconciled with the cases in this jurisdiction and those of our sister states that citizens impressed into various kinds of civic service may recover [workers’ compensation benefits].”<sup>100</sup>

Similarly, based on the premise that jurors lack control over their duties, courts have also reached contrary conclusions regarding whether jurors should receive workers’ compensation coverage. For example, several courts reasoned that jurors should receive workers’ compensation coverage because they are

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<sup>94</sup> *Yount v. Boundary County*, 796 P.2d 516, 525 (Idaho 1990). The *Yount* court went even further than the *Rogers* court when it provided the statutory basis for the state’s juror appointment process. Compare *id.* at 525 n.7., with *Rogers*, 117 N.E. at 36.

<sup>95</sup> *Holmgren*, 455 N.W.2d at 203.

<sup>96</sup> *Jeansonne v. Parish of E. Baton Rouge*, 11663 (La. App. 1 Cir. 12/28/77); 354 So. 2d 619, 620.

<sup>97</sup> *Lockerman v. Prince George’s County*, 377 A.2d 1177, 1182 (Md. 1977); see also *Jaskoviak v. Indus. Comm’n*, 785 N.E.2d 1026, 1029 (Ill. App. Ct. 2003) (noting that the claimant could not choose to decline jury duty); *Bd. of Comm’rs v. Evans*, 60 P.2d 225, 226–27 (Colo. 1936) (noting that jurors are “selected,” “summoned,” and are not “consulted as to whether or when [they] shall serve, or as to the duration of [their] service . . .”).

<sup>98</sup> *Hicks v. Guilford County*, 148 S.E.2d 240, 243 (N.C. 1966).

<sup>99</sup> *Bolin v. Kitsap County*, 785 P.2d 805, 806 (Wash. 1990).

<sup>100</sup> *Id.*

subject to the control of the court.<sup>101</sup> The Supreme Court of Colorado, however, reasoned that jurors should not receive coverage because they are subject to the control of the court.<sup>102</sup>

Conversely, courts have reached contrary conclusions regarding whether jurors should receive workers' compensation coverage based on the premise that jurors are autonomous. On the one hand, the Supreme Court of North Carolina reasoned that jurors were not eligible for workers' compensation because they have extensive control over the performance of their duties.<sup>103</sup> On the other hand, the Supreme Court of North Dakota concluded that jurors were eligible for compensation for the same reason: jurors have extensive control of the performance of their duties.<sup>104</sup>

Comparing *Holmgren* to *Hicks* presents a particularly clear instance of the inconsistency in how courts determine whether jurors are eligible for workers' compensation. The extensive analysis of juror independence in *Holmgren* mirrors the analysis in *Hicks*,<sup>105</sup> but the courts reached opposite conclusions as to

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<sup>101</sup> See, e.g., *Waggener v. County of Los Angeles*, 46 Cal. Rptr. 2d 141, 144 (Cal. Ct. App. 1995) (noting that the County controls almost "each and every" aspect of the juror's "work environment" and "whereabouts"); *O'Malley's Case*, 281 N.E.2d 277, 279 (Mass. 1972) (noting that court orders exercise "control and direction" over the jurors); *Indus. Comm'n v. Rogers*, 171 N.E. 35, 36 (Ohio 1930) (noting that the "force, authority, finality, and effectiveness of a verdict is wholly dependent upon the judgment entered thereon by the court"); *Bolin*, 785 P.2d at 808 ("jurors under a superior court judge's *control* are county employees for purposes of the [Workers' Compensation] Act") (emphasis added).

<sup>102</sup> See *Evans*, 60 P.2d at 226–27 (noting that jurors do not control matters they may decide).

<sup>103</sup> *Hicks*, 148 S.E.2d at 243–44.

<sup>104</sup> See *Holmgren v. N.D. Workers Comp. Bureau*, 455 N.W.2d 200, 205, 206 (N.D. 1990) (noting that jurors are "autonomous" and concluding that jurors should receive workers' compensation coverage).

<sup>105</sup> Compare *Hicks*, 148 S.E.2d at 243 ("Obviously, a juror is not subject to direction and control of county officials as to the manner in which the juror discharges his duties, in the sense that an employee in an industry is subject to direction by his employer. On the contrary, even the trial judge is expressly forbidden to convey to the jury in any manner at any stage of the trial his opinion as to how the jury should determine a question of fact."), with *Holmgren*, 455 N.W.2d at 205 (internal quotations and citations omitted) ("[A]lthough jurors must follow the law as it is given by the court and apply only that law to the facts as the jurors find them, within their own province, jurors are autonomous. [T]hey are given the power of decision and are permitted to deliberate in secret and to announce their verdict without giving reasons for it.").

whether the independence of jurors warranted workers' compensation coverage.<sup>106</sup>

### C. *Jurors' Remuneration*

When courts decide whether jurors should receive workers' compensation, they often discuss the fact that jurors receive remuneration for their service.<sup>107</sup> Some courts said that, among other reasons, jurors should receive workers' compensation because, like employees, they receive payment for their services.<sup>108</sup> Other courts, however, said that jurors should not receive workers' compensation because their payment differs from the payment typically disbursed to employees.<sup>109</sup> Indeed, the latter courts distinguish juror remuneration from typical employment remuneration because juror remuneration is provided by statute,<sup>110</sup> is not based on the number of hours worked,<sup>111</sup> only amounts to "some slight compensation,"<sup>112</sup> and, in some instances, jurors may continue to receive their salaries from their regular employers while they serve.<sup>113</sup>

## IV. THE REMEDY: LEGISLATIVE CLARIFICATION

The value of legislative clarification is apparent in light of the existing jurisprudence on this issue. Most courts looked to legislative intent to address the question of whether jurors should receive workers' compensation.<sup>114</sup> Some of those courts even held that the power to decide the issue was exclusively

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<sup>106</sup> Compare *Hicks*, 148 S.E.2d at 244 (concluding that jurors should not receive workers' compensation coverage), with *Holmgren*, 454 N.W.2d at 205–06 (concluding that jurors should receive workers' compensation coverage).

<sup>107</sup> See, e.g., *Jeansonne v. Parish of E. Baton Rouge*, 11663 (La. App. 1 Cir. 12/28/77); 354 So. 2d 619, 620; *Holmgren*, 455 N.W.2d at 203; *Indus. Comm'n v. Rogers*, 171 N.E. 35, 37 (Ohio 1930).

<sup>108</sup> See *Holmgren*, 455 N.W.2d at 203; *Rogers*, 171 N.E. at 37.

<sup>109</sup> See *Brouwer v. Metropolitan Dade County*, 139 F.3d 817, 819 (11th Cir. 1998); *Jeansonne*, 354 So. 2d at 620; *O'Malley's Case*, 281 N.E.2d 277, 279 (Mass. 1972).

<sup>110</sup> *Brouwer*, 139 F.3d at 819.

<sup>111</sup> *Id.*

<sup>112</sup> *Jeansonne*, 354 So. 2d at 620.

<sup>113</sup> *O'Malley's Case*, 281 N.E.2d at 279.

<sup>114</sup> E.g., *Bd. of Comm'rs v. Evans*, 60 P.2d 225, 227 (Colo. 1936); *Jaskoviak v. Indus. Comm'n*, 785 N.E.2d 1026, 1030 (Ill. App. Ct. 2003); *Lockerman v. Prince George's County*, 377 A.2d 1177, 1180 (Md. 1977).

vested in their state legislatures.<sup>115</sup> Accordingly, New York courts would also look to its state legislature. However, because the current statutory structure of New York's Workers' Compensation Act fails to expressly mention jurors, a New York court confronted with this issue would face the daunting challenge of trying to make sense of the existing out-of-state jurisprudence, which is laden with inconsistencies. Indeed, Barry Stevens' future in the courts of New York would be uncertain. In the interest of judicial economy, the legislature ought to clarify and resolve this issue to spare the time and expense the courts would otherwise incur in addressing this issue. For the reasons that follow, the legislature should clarify that jurors should not receive workers' compensation.

A. *The Policy Behind the New York Workers' Compensation Statute Indicates that Jurors Should Not Be Covered*

The Legislature should specify that jurors are not eligible for workers' compensation because that would comport with the policy underlying the enactment of the workers' compensation statute—to mitigate the effects of widespread industrial accidents.<sup>116</sup> Accordingly, the New York Workers' Compensation Act currently reflects that policy by providing coverage to specific categories of “[h]azardous employments.”<sup>117</sup> Though it is possible for jurors to sustain injuries in the course of their duties, that possibility is too remote to qualify jury duty as “hazardous.”<sup>118</sup> In sum, because the Workers' Compensation Act is meant to

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<sup>115</sup> See *Evans*, 60 P.2d at 227 (“The legislative branch of the government has not said that a juror is an employee of the county, and it does not lie with the judicial branch to belittle the functions of his great office by so declaring.”); *Lockerman*, 377 A.2d at 1184 (saying that whether jurors receive coverage is “a matter for legislative determination”); *Silagy v. State*, 253 A.2d 478, 479 (N.J. Super. Ct. App. Div. 1969) (noting that this issue “should be addressed, in the first instance, to the Legislature”).

<sup>116</sup> See Epstein, *supra* note 38, at 775–76; Gabel et al., *supra* note 32, at 406.

<sup>117</sup> N.Y. WORKERS' COMP. LAW § 3 (McKinney 2017).

<sup>118</sup> See *Yount v. Boundary County*, 796 P.2d 516, 526 (Idaho 1990) (noting that likelihood of juror injuries is remote, even though substantial injuries are possible); *Lockerman*, 377 A.2d at 1180 (stating that “simple common sense” suggests that extending Workers' Compensation coverage to jurors would contravene the act's premise).

respond to the frequency of injuries sustained in the course of “hazardous” employments, allowing jurors to receive workers’ compensation coverage would be “manifestly absurd.”<sup>119</sup>

Moreover, allowing jurors to receive workers’ compensation benefits would not only contravene the policy underlying workers’ compensation, but also open the floodgates to further amendments that do not comport with the policy behind the act. That path could potentially lead to unlimited municipal liability. Indeed, those in the performance of civic functions were “clearly not contemplated by the Act” and the addition of coverage for jurors might lead to coverage for election inspectors, bond trustees, appraisers, and even “any person . . . called on for any purpose. There would be no limit to those who could claim against the count[ies].”<sup>120</sup> Therefore, precluding jurors from receiving workers’ compensation coverage would conform with the policy supporting the Act and eliminate the possibility for the opposite conclusion to contravene the Act.

*B. The Language of New York’s Workers’ Compensation Statute Indicates that Jurors Should Not Be Covered*

As previously stated, New York’s Workers’ Compensation Act primarily grants coverage to employees that fall within enumerated categories of “[h]azardous employments.”<sup>121</sup> Not only is jury work not hazardous, but it also fails to meet the statutory definition of “employment.” New York’s Workers’ Compensation Act provides that “employment” exists when a worker conducts business for the employer’s “pecuniary gain.”<sup>122</sup> It follows, then, that jurors are not in an “employment” arrangement because they do not act for the financial benefit of New York’s counties; they serve a public or a civic duty.

As applied to municipalities, New York’s Workers’ Compensation Act contains a few exceptions to the statutory requirement that “employment” must be for the employers’ pecuniary gain. Notably, those exceptions comport with the

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<sup>119</sup> See *Lockerman*, 377 A.2d at 1180.

<sup>120</sup> *Metropolitan Dade County v. Glassman*, 341 So. 2d 995, 996 (Fla. 1976) (quoting *Leon County v. Sauls*, 9 So. 2d 461, 463 (Fla. 1942)).

<sup>121</sup> N.Y. WORKERS’ COMP. LAW § 3 (McKinney 2017). Group 17, which lists the employees that municipalities must cover, does not include jurors. Jurors could, however, fit in to Group 19, which grants municipalities the option to provide coverage to employees not listed in Group 17. *Id.*

<sup>122</sup> *Id.* § 2 (McKinney 2017).

underlying policy in a way that an exception for jurors would not. The exceptions provide that (1) municipalities are required to cover employees that work in a “prison reformatory, hospital for the mentally ill or hospital maintained or operated by a municipal corporation or other subdivision of the state, notwithstanding the definitions of the terms ‘employment,’ ‘employer’ or ‘employee’ ”;<sup>123</sup> (2) municipalities are required to cover county fire coordinators and deputy county fire coordinators;<sup>124</sup> (3) municipalities are required to cover county sheriffs, undersheriffs, and sheriffs’ deputies, “notwithstanding the definition of the term ‘employment’ ”;<sup>125</sup> (4) municipalities are required to cover civil defense volunteers, including rescue squads and auxiliary firefighters, during the course of their training;<sup>126</sup> and (5) municipalities have the option to provide auxiliary police officers with coverage, thereby bringing auxiliary police officers within the statutory definition of “employment.”<sup>127</sup> Certainly, providing coverage to prison employees, hospital employees, fire coordinators, deputy fire coordinators, sheriffs, undersheriffs, sheriffs’ deputies, volunteer rescue squad members, auxiliary firefighters, and auxiliary police officers—all of whom face threats to their life, health, and safety while at work—complies with the underlying policy of protecting against injuries sustained in the course of inherently hazardous work. The work of jurors, on the other hand, is vastly different from those excepted types of work and merits no such protection.

As applied to state employees, New York’s Workers’ Compensation Act contains a similar exception to the statutory definition of “employment.” The statute provides coverage to those under “[a]ny employment by the state, including the employment of all elected and appointed public officers, notwithstanding the definitions of the terms ‘employment,’ ‘employer’ or ‘employee.’ ”<sup>128</sup> The statute, however, restricts state employee classification by providing that those “whose wages are paid by . . . an employer other than the state . . . shall be deemed

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<sup>123</sup> *Id.* § 3 (McKinney 2017). The employees covered by the statute are “keeper[s], guard[s], resident physician[s], nurse[s], interne[s], resident interne[s], assistant resident interne[s] or orderl[ies].” *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* § 2 (McKinney 2017); *id.* § 3 (McKinney 2017).

<sup>128</sup> *Id.* § 3 (McKinney 2017).

an employee of . . . such employer other than the state . . . .”<sup>129</sup> In addition, New York law requires many employers to pay their employees the daily \$40 jury fee, much like a wage, when their employees are summoned for jury duty.<sup>130</sup> Applying these principles, even if jurors, in their role as such, are generally under “employment by the state,” many, if not most, jurors could not qualify as state employees because their employers pay their daily jury fee for the first three days.<sup>131</sup>

C. *The Chief Policy Arguments for Extending Workers’ Compensation Coverage to Jurors Are Without Merit*

The policy arguments in favor of jurors receiving workers’ compensation are insufficient to merit juror coverage. There are two chief policy arguments in support of extending workers’ compensation coverage to jurors. The first is that jurors should receive workers’ compensation because, outside of workers’ compensation, jurors have no means to recover for their injuries sustained as jurors; their claims are typically barred by judicial immunity and municipal immunity.<sup>132</sup>

New York law contains both immunities. New York’s municipal immunity shields public entities, including the counties that summon jurors, from liability for discretionary actions taken in the performance of governmental functions.<sup>133</sup> Additionally, New York’s judicial immunity protects judges in the performance of their judicial functions,<sup>134</sup> and extends, in the form of quasi-judicial immunity, to those who are “delegated judicial or quasi-judicial functions,” because they are “integral parts of the judicial process.”<sup>135</sup>

Under those doctrines, the court officials who direct, the judges who oversee, and the counties that summon jurors are immune from suit regarding injuries resulting from those

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<sup>129</sup> *Id.*

<sup>130</sup> See N.Y. JUD. LAW § 519 (McKinney 2017) (requiring employers with ten or more employees to pay the \$40 fee for the first three days of service); *id.* at § 521.

<sup>131</sup> See *id.* § 519; *id.* § 521 (McKinney 2017).

<sup>132</sup> *Bolin v. Kitsap County*, 785 P.2d 805, 806 (Wash. 1990).

<sup>133</sup> *Valdez v. City of New York*, 960 N.E.2d 356, 361–62, 18 N.Y. 3d 69, 74–76, 936 N.Y.S.2d 587, 592–93 (N.Y. 2011).

<sup>134</sup> *Mosher-Simons v. County of Allegany*, 783 N.E.2d 509, 512, 99 N.Y.2d 214, 218–20, 753 N.Y.S.2d 444, 447 (N.Y. 2002).

<sup>135</sup> *Id.* at 512–13; 99 N.Y.2d at 220; 753 N.Y.S.2d at 447 (internal quotations omitted).

functions. Though those circumstances are unfortunate for injured jurors, they do not warrant adding jurors as a class of protected workers under workers' compensation because the Act is meant to protect against hazardous employment, and the work of jurors is neither hazardous nor employment.<sup>136</sup> Therefore, even though injured jurors lack other means of recovery,<sup>137</sup> they cannot be eligible for workers' compensation.

The second chief argument for extending workers' compensation coverage to jurors is that providing coverage to jurors is consistent with the legislatures' broad intention to liberally construe and apply workers' compensation statutes.<sup>138</sup> In fact, New York jurisprudence indicates that the state's Workers' Compensation Act should be liberally construed.<sup>139</sup> For the reasons explained, however, permitting jurors to receive workers' compensation contravenes the policy underlying the Act.<sup>140</sup> Indeed, the liberal construction and purpose argument is unpersuasive because, notwithstanding the policy of liberally construing the Workers' Compensation Act, the notion that jurors should receive such coverage "disregard[s] [the] clear meaning" of workers' compensation.<sup>141</sup> Put simply, even the most liberal construction does not permit contravention of purpose.

*D. The Remedy: A Specific Legislative Provision Precluding Jurors from Workers' Compensation Coverage*

The suggested remedy is a simple one. The legislature should specifically preclude jurors from workers' compensation coverage. In fact, the New York legislature has already done

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<sup>136</sup> See *supra* Part IV, Sections A–B.

<sup>137</sup> This could change if the legislature creates a doctrine outside of Workers' Compensation that provides for injured jurors' medical expenses.

<sup>138</sup> See *Waggener v. County of Los Angeles*, 46 Cal. Rptr. 2d 141, 144 (Cal. Ct. App. 1995) (noting that covering jurors is "wholly consistent with the *broad* purposes of the Act") (emphasis added); *Yount v. Boundary County*, 796 P.2d 516, 522 (Idaho 1990) (noting that Workers' Compensation law was to be "liberally construed" and saying the court's task was, in pursuit of that end, "to ascertain if the provisions of the [Workers' Compensation] statute[] are capable of being so interpreted.").

<sup>139</sup> *E.g.*, *Neacosia v. N.Y. Power Auth.*, 649 N.E.2d 1188, 1191, 85 N.Y.2d 471, 476, 626 N.Y.S.2d 44, 47 (N.Y. 1995); *Lemon v. N.Y.C. Transit Auth.*, 528 N.E.2d 1205, 1207, 72 N.Y.2d 324, 326, 532 N.Y.S.2d 732, 734 (N.Y. 1988); *Smith v. Tompkins Cty. Courthouse*, 459 N.E.2d 155, 156, 60 N.Y.2d 939, 941, 471 N.Y.S.2d 46, 47 (N.Y. 1983).

<sup>140</sup> See *Gabel et al.*, *supra* note 32, at 406; see also *Epstein*, *supra* note 38, at 776.

<sup>141</sup> *Lockerman v. Prince George's County*, 377 A.2d 1177, 1182 n.5 (Md. 1977).



that for other types of municipal workers. For example, the portion of the statute that governs municipal employees provides that Department of Sanitation employees “shall not be within the coverage of this chapter.”<sup>142</sup> The legislature need only add that “jurors shall not be within the coverage of this chapter.” Alternatively, the legislature could take an approach similar to the one taken by Congress by specifying, in the definitions section of the statute,<sup>143</sup> that “employee” does not include those “serving as a petit or grand juror.”<sup>144</sup> Either way, the legislature should properly and decisively settle the issue.

#### CONCLUSION

In conclusion, the New York legislature should add a provision to the New York Workers' Compensation Act that specifically precludes jurors from coverage. That amendment would comport with the policies underlying the Workers' Compensation Act and potentially save the court system considerable time and expense.

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<sup>142</sup> See N.Y. WORKERS' COMP. LAW § 3 (McKinney 2017).

<sup>143</sup> N.Y. WORKERS' COMP. LAW § 2 (McKinney 2017).

<sup>144</sup> 5 U.S.C. § 8101 (2012).