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## Civil Procedure: Statutory Interpretation: Compensating for Ambiguities in the Workers' Compensation Act—Schmitz v. U.S. Steel Corp.

Megan L. Odom

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**CIVIL PROCEDURE: STATUTORY INTERPRETATION:  
COMPENSATING FOR AMBIGUITIES IN THE WORKERS'  
COMPENSATION ACT—SCHMITZ V. U.S. STEEL CORP.**

Megan L. Odom<sup>†</sup>

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<sup>†</sup> JD Candidate, Mitchell Hamline School of Law, 2017; BA Spanish, BA Sociology of Law, Criminology, and Deviance, University of Minnesota, 2014. I would like to extend special thanks to Professor Deborah Schmedemann for her helpful comments and contributions in revising this case note. I am also grateful to the Associates and Editors of the *Mitchell Hamline Law Review* for their meaningful suggestions and impeccable Bluebooking. A shout-out (and fist pump!) to Diane Galatowitsch, who also endured this process and encouraged me along the way. Finally, infinite thanks to my family and friends for their immeasurable support.

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## I. INTRODUCTION

In *Schmitz v. U.S. Steel Corp.*,<sup>1</sup> a divided Minnesota Supreme Court held that the state constitutional right to a jury trial applied to individuals bringing suit under the retaliatory discharge provision<sup>2</sup> of the Workers’ Compensation Act (WCA).<sup>3</sup> The court determined, as a matter of law, that the nature of the controversy overrode the default presumption that matters arising under the WCA are not entitled to jury trials.<sup>4</sup>

This case note first provides an abbreviated history of the civil right to a jury trial,<sup>5</sup> the WCA,<sup>6</sup> and the evolving claim of retaliatory discharge.<sup>7</sup> It then fuses these histories and discusses jury trials in cases where an employee is discharged in retaliation for exercising his or her workers’ compensation rights.<sup>8</sup>

This note then turns to the *Schmitz* decision, recounting both the majority and dissenting opinions.<sup>9</sup> Although this note finds the court ultimately came to the correct conclusion, it contends that the court erred by finding that section 176.82 of the WCA was unambiguous.<sup>10</sup> It explores an additional avenue of analysis—

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1. *Schmitz v. U.S. Steel Corp. (Schmitz III)*, 852 N.W.2d 669, 677 (Minn. 2014).

2. MINN. STAT. § 176.82, subdiv. 1 (2014).

3. See MINN. STAT. §§ 176.001–.862.

4. See *Schmitz III*, 852 N.W.2d at 677 (citing *Abraham v. Cty. of Hennepin*, 639 N.W.2d 342, 354 (Minn. 2002)).

5. See *infra* Part II.A.

6. See *infra* Part II.B.

7. See *infra* Part II.C.

8. See *infra* Part II.D.

9. See *infra* Part III.

10. See *infra* Part IV.A.

statutory interpretation—which further supports the *Schmitz* holding.<sup>11</sup> The court ought to have compensated for ambiguities within the WCA, whether by applying textual canons of construction<sup>12</sup> or employing the purposive approach.<sup>13</sup>

## II. HISTORY

The instant matter—civil jury trials in retaliatory discharge actions arising under the WCA—exists at the intersection of several legal spheres, including employment law, workers’ compensation, and the judge/jury dichotomy. In order to understand the *Schmitz* holding, it is critical to understand the history of these underlying topics. This historical overview juggles several issues simultaneously: (1) civil jury trials, (2) the workers’ compensation system, and (3) retaliatory discharge claims. Ultimately, these three topics will be woven together, forming a fabric that provides the framework for the *Schmitz* decision.

### A. *The Civil Right to a Jury Trial*

Although the origins of the civil right to a jury trial are debated,<sup>14</sup> the history is clearer when honing in on the civil right to a jury trial in America.<sup>15</sup> The Seventh Amendment to the U.S. Constitution preserves the right to trial by jury “[i]n [s]uits at common law.”<sup>16</sup> Minnesota drafted its own constitution in 1857 before it achieved statehood in 1858.<sup>17</sup> Minnesota’s Constitution

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11. See *infra* Part IV.B–C.

12. See *infra* Part IV.B.

13. See *infra* Part IV.C.

14. See Grant M. Borgen, Note, *Civil Procedure: The Civil Right to a Jury Trial and What It Means for Minnesota Creditors in Light of United Prairie Bank-Mountain Lake v. Haugen Nutrition & Equipment, LLC*, 39 WM. MITCHELL L. REV. 245, 247 n.15 (2012) (juxtaposing sources which contest whether the civil right to a jury trial is traceable to the Magna Carta).

15. See *id.* at 247–49. Even in America, the civil right to jury trial was initially debated prior to its inclusion in the federal Constitution. *Id.*

16. U.S. CONST. amend. VII (“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . .”).

17. Fred L. Morrison, *An Introduction to the Minnesota Constitution*, 20 WM. MITCHELL L. REV. 287, 295–99 (2002). See generally Douglas A. Hedin, *The Quicksands of Originalism: Interpreting Minnesota’s Constitutional Past*, 30 WM. MITCHELL L. REV. 241, 242–45 (2003) (providing a history of the evolution of Minnesota’s Constitution).

provides a similar, but distinct, guarantee as compared to the U.S. Constitution.<sup>18</sup> This is important because the Seventh Amendment does not apply to states,<sup>19</sup> making federal precedent persuasive but not precedential in Minnesota.<sup>20</sup>

Article I, section 4 of the Minnesota Constitution states that “[t]he right of trial by jury shall remain *inviolable*, and shall extend to all cases *at law* . . . .”<sup>21</sup> The case of *Ewert v. City of Winthrop* established that the civil right to jury trial “must be found either in the Minnesota Constitution or provided specifically by statute.”<sup>22</sup> When there is no explicit statutory grant for jury trial, the focus of the inquiry is whether the claim is an action *at law*, for which the constitution guarantees a jury trial, or an action *in equity*, to which no similar right attaches.<sup>23</sup>

Minnesota courts evaluate whether a cause of action would have been entitled to a jury trial at the time the Minnesota Constitution was adopted in 1857.<sup>24</sup> However, the right to jury trial is not frozen to only causes of action that existed in 1857.<sup>25</sup> Recent Minnesota Supreme Court jurisprudence suggests that the right to jury trial instead depends on the general “nature and character of the controversy.”<sup>26</sup> This involves examining the nature of the claim (at law or in equity) and the nature of the relief sought (damages versus injunctive relief).<sup>27</sup> If the party brings a claim at law and seeks damages, there is a constitutional right to a jury trial.<sup>28</sup>

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18. Notably, Minnesota does not require a minimum amount of damages. Compare U.S. CONST. amend. VII, with MINN. CONST. art. I, § 4.

19. Charles W. Wolfram, *The Constitutional History of the Seventh Amendment*, 57 MINN. L. REV. 639, 645–46 (1973).

20. See *State v. Hamm*, 423 N.W.2d 379, 382 (Minn. 1988).

21. MINN. CONST. art. I, § 4 (emphasis added); cf. *United States v. Booker*, 543 U.S. 220, 244 (2005) (“[T]he interest in fairness and reliability protected by the right to jury trial—a common law right that defendants enjoyed for centuries . . . has always outweighed the interest in concluding trials swiftly.”).

22. *Ewert v. City of Winthrop*, 278 N.W.2d 545, 550 (Minn. 1979).

23. *Abraham v. Cty. of Hennepin*, 639 N.W.2d 342, 349 (Minn. 2002). This dichotomy between legal and equitable actions often boils down to whether the parties seek monetary damages (legal) or injunctive relief (equitable). See *Bond v. Welcome*, 61 Minn. 43, 43–44, 63 N.W. 3, 3–4 (1895).

24. *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 149 (Minn. 2001).

25. *United Prairie Bank-Mountain Lake v. Haugen Nutrition & Equip., LLC*, 813 N.W.2d 49, 53 (Minn. 2012) (citing *Abraham*, 639 N.W.2d at 349).

26. *Abraham*, 639 N.W.2d at 353.

27. *Id.* However, “seeking monetary relief is not enough by itself to guarantee

B. *Minnesota's Workers' Compensation Act*

The WCA<sup>29</sup> is a much more recent development than the right to jury trial.<sup>30</sup> In Minnesota, workers' compensation legislation was first enacted in 1913 and has been compulsory since 1937.<sup>31</sup> The WCA was "devised to provide protection to workmen in the form of compensation for injuries arising from hazards having a reasonable relation to [their] employment . . . ."<sup>32</sup> The workers' compensation system is "based on a mutual renunciation of common law rights and defenses by employers and employees alike."<sup>33</sup> The Act was overhauled in 1983<sup>34</sup> and amended significantly in 1995.<sup>35</sup>

1. *Protecting Workers: A Historical Perspective*

Minnesota was one of the first states<sup>36</sup> to enact a workers' compensation act; New York passed the first compulsory workers'

a jury trial . . . . While claims for money damages are typically legal claims, a party should not be permitted to cloak or disguise an equitable action simply by its prayer for relief." *Id.* (citation omitted). The U.S. Supreme Court, when determining whether a claim warrants a jury trial under the Seventh Amendment, places greater emphasis on the remedy sought than does the Minnesota Supreme Court. *See, e.g.,* *Chauffeurs Local No. 391 v. Terry*, 494 U.S. 558, 565 (1990); *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 (1989).

28. *See Abraham*, 639 N.W.2d at 353.

29. MINN. STAT. §§ 176.001–862 (2014).

30. *Jones v. Schiek's Cafe*, 277 Minn. 273, 152 N.W.2d 356, 359 (1967) (calling the WCA "a salutary social development").

31. Act of Apr. 24, 1913, ch. 467, 1913 Minn. Laws 675 (current version at MINN. STAT. §§ 176.001–861); *see also* Act of Mar. 12, 1937, ch. 64, 1937 Minn. Laws 109, 111 (current version at MINN. STAT. §§ 176.021–031).

32. *Jones*, 277 Minn. at 277, 152 N.W.2d at 358–59.

33. MINN. STAT. § 176.001.

34. *See generally* Leslie Altman et al., *Minnesota's Workers' Compensation Scheme: The Effects and Effectiveness of the 1983 Amendments*, 13 WM. MITCHELL L. REV. 843, 864 (1987) (analyzing substantive changes resulting from 1983 amendments).

35. *See generally* Thomas L. Johnson & Catherine J. Wasson, *The Minnesota Workers' Compensation Act: Amendments by the 1995 Minnesota Legislature*, 22 WM. MITCHELL L. REV. 1493, 1494 (1996) (detailing the impact of the 1995 amendments).

36. Minnesota was not only one of the first states to enact a workers' compensation act, it was one of the three pioneering states to consider the concept. Judson MacLaury, *Government Regulation of Workers' Safety and Health, 1877–1917*, U.S. DEP'T LAB., <http://www.dol.gov/dol/aboutdol/history/monoregsafepart06.htm> ("In 1909 New York, Wisconsin, and Minnesota set up commissions to investigate the question of employers' liability for accidents.").

compensation law in 1910,<sup>37</sup> and by 1949 all states had similar laws on the books.<sup>38</sup> These legislative innovations protected workers who, courtesy of the industrial revolution, were at great risk for physical injuries on the job.<sup>39</sup> This was part of the momentum from progressive era reforms wherein the government intervened on the formerly sacrosanct freedom of contract<sup>40</sup> in order to protect individuals from industry.<sup>41</sup> Although textbooks often focus on legislative efforts to safeguard child laborers and curtail the workday, the enactment of workers' compensation laws is an oft-forgotten landmark in the history of workers' rights.<sup>42</sup> Acts like Minnesota's WCA were truly revolutionary, abandoning the common-law principles of contributory negligence and assumption of the risk<sup>43</sup> in cases involving workplace injuries in exchange for statutorily guaranteed compensation regardless of fault.<sup>44</sup>

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37. Act of June 25, 1910, ch. 674, 1910 N.Y. Laws 1945. Notably, however, New York's law covered only certain dangerous types of employment. Barry Bennett, *Workers' Compensation and the Laborer: Reflections of an Uninjured Jurist*, 11 *HAMLIN J. PUB. L. & POL'Y* 211, 214–15 (1990).

38. The U.S. Supreme Court held New York's workers' compensation laws constitutional in 1917, at which point “the path of reform was clear” to the rest of the nation. Bennett, *supra* note 37, at 215.

39. *Id.* at 212 (“The industrial revolution was not always kind to the laborer. . . . [M]echanization was cutting off not just spirit but arms and legs as well . . .”).

40. Law students will surely remember the infamous *Lochner* era in which courts relied on freedom of contract principles to strike down regulatory legislation. See generally Stephen A. Siegel, *Lochner Era Jurisprudence and the American Constitutional Tradition*, 70 *N.C. L. REV.* 1, 27 (1991) (“In Due Process Clause disputes, the judges delimited governmental power over private property by fleshing out the concepts of ‘property’ and ‘liberty of contract.’”).

41. In the early 1900s, progressives were no longer content with employers bearing sole responsibility for the health and safety of workers. They sought the help of a higher power—the government—to achieve their reform goals. In 1911, Secretary of Commerce and Labor Charles Nagel voiced these concerns at an industrial safety conference, stating that “it takes the government to establish the rules of the game” to ensure that workers are properly protected. See MacLaury, *supra* note 36.

42. See, e.g., AARON H. CAPLAN, *AN INTEGRATED APPROACH TO CONSTITUTIONAL LAW* 229–30 (2015).

43. See, e.g., *Foley v. Honeywell, Inc.*, 488 N.W.2d 268, 271 (Minn. 1992) (“The Act . . . was designed to give workers immediate recovery for their injuries suffered while on the job, without regard to the common law’s ‘three evil sisters,’ contributory negligence, the fellow-servant rule, and assumption of risk.”); see also Marco Heimann, *Experimental Studies on Moral Values in Finance: Windfall Gains, Socially Responsible Investment, and Compensation Plans* 14 (Dec. 10, 2013) (unpublished Ph.D. dissertation, University of Toulouse), <http://>

## 2. *Protecting Employers: Providing an Exclusive Remedy*

In exchange for the protections afforded by workers' compensation acts, employees generally must abandon tort causes of action against employers.<sup>45</sup> This is known as "exclusivity," and it is codified in the WCA<sup>46</sup> and enforced in case law.<sup>47</sup> The benefit to employers is that, although they give up common-law defenses, they receive limited statutory liability and are exempt from jury verdicts.<sup>48</sup> Some sources call this trade-off "quid pro quo"<sup>49</sup> or refer

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[www.frenchsif.org/isr/wp-content/uploads/PhD-Marco-Heimann.pdf](http://www.frenchsif.org/isr/wp-content/uploads/PhD-Marco-Heimann.pdf) (discussing how some industries even required employees to give up their right to sue for injury at the outset of their employment, signing contracts known as "death contracts" or the "worker's right to die").

44. Although the workers' compensation coverage of workplace injury claims, regardless of fault, provided a benefit to employees, there was a clear sacrifice made. Employees gave up the right to jury trial, forgoing the opportunity for a jury of peers to evaluate the case and instead abiding by statutorily predetermined remedies. *See, e.g.*, *Leach v. Lauhoff Grain Co.*, 366 N.E.2d 1145, 1147 (Ill. App. Ct. 1977) ("The [Workers's Compensation] Act took away from the employee the right to sue in tort in exchange for his right[s] under the Act.").

45. Thomas F. Coleman, *Fundamentals of Workers' Compensation in Minnesota*, 41 WM. MITCHELL L. REV. 1289, 1292 (2015). There are very limited circumstances wherein an employee may pursue a tort cause of action. *Id.*

The employee may sue the employer in tort if the employer: (1) is uninsured for workers' compensation liability or fails to be self-insured as required by . . . [section] 176.031, (2) intentionally injures or assaults the employee, (3) is subject to liability under federal law (e.g., liability under the American [sic] with Disabilities Act), (4) is liable under . . . [section] 176.82 in district court, or (5) is liable under the Minnesota Human Rights Act.

*Id.* at 1292 n.12.

46. *See* MINN. STAT. § 176.031 (2014) ("The liability of an employer . . . is exclusive and in the place of any other liability . . .").

47. *See, e.g.*, *Kaess v. Armstrong Cork Co.*, 403 N.W.2d 643, 643 (Minn. 1987) (answering certified question and finding that the exclusive remedy provision within the WCA barred employee's products liability action against employer who manufactured insulation containing asbestos).

48. Jean C. Love, *Retaliatory Discharge for Filing a Workers' Compensation Claim: The Development of a Modern Tort Action*, 37 HASTINGS L.J. 551, 551 (1986); *see also* Bennett, *supra* note 37, at 211–12 (suggesting that the compensation system was an "attempt[] by corporations to reduce the costs of injury and avoid potentially ruinous jury verdicts"). But what is the rationale for omitting jury trials in workers' compensation cases? Perhaps it is for the sake of simplicity or consistency. *See* *Clanton v. Cain-Sloan Co.*, 677 S.W.2d 441, 443 (Tenn. 1984) ("The amount of compensation is limited and determined according to a definite schedule rather than left to the vagaries of a jury verdict.").



to it as the “compensation bargain.”<sup>50</sup> Scholars aptly point out, however, that this exchange of rights and remedies initially did not contemplate a cause of action for race-based discrimination or retaliatory discharge, for example.<sup>51</sup> The exclusive remedy conception was limited to physical injuries.<sup>52</sup> Minnesota courts in particular have been consistently unwilling to violate the exclusivity principle “without a clear manifestation of legislative intent to do so.”<sup>53</sup>

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49. *Meintsma v. Loram Maint. of Way, Inc.*, 684 N.W.2d 434, 438 (Minn. 2004) (“The exclusive remedy provision ‘is part of the *quid pro quo* of the workers’ compensation scheme . . . .’” (quoting *Karst v. F.C. Hayer Co.*, 447 N.W.2d 180, 183–84 (Minn. 1989))).

50. *See, e.g.*, *City of Moorpark v. Superior Court*, 57 Cal. Rptr. 2d 156, 159 (Ct. App. 1996).

51. *See* Ellyn Moscovitz, *Outside the “Compensation Bargain:” Protecting the Rights of Workers Disabled on the Job to File Suits for Disability Discrimination*, 37 SANTA CLARA L. REV. 587, 594 (1997) (noting that civil rights causes of action did not even exist when workers’ compensation legislation was first enacted).

52. *See id.* at 598.

53. *Karst*, 447 N.W.2d at 185. Perhaps the most extreme example of the judiciary’s unwillingness to infringe on the legislature’s territory can be seen in *McGowan v. Our Savior’s Lutheran Church*, 527 N.W.2d 830, 842–43 (Minn. 1995). In *McGowan*, the plaintiff’s tort action for negligence against her employer was barred by the exclusivity principle where she had already received workers’ compensation benefits for the physical injuries sustained as a result of being raped in the workplace. *McGowan*, 527 N.W.2d at 834. This stringent adherence to the exclusivity principle seems to fly in the face of public policy and may explain why some states have a judicially created public policy exception. *See infra* note 90 and accompanying text. Although Minnesota courts did not rely on the public policy exception in acknowledging a right to a civil action for retaliatory discharge, other states have. *See, e.g.*, *Leach v. Lauhoff Grain Co.*, 366 N.E.2d 1145, 1147 (Ill. App. Ct. 1977) (“To accept defendant’s argument here [that the exclusivity principle overrides a plaintiff’s right to a retaliatory discharge action] would be to say to the employee, ‘Although you have no right to a tort action, you have a right to a workmen’s compensation claim which, while it may mean less money, is a sure thing. However, if you exercise that right, we will fire you.’”).

Notably, section 176.82 of the WCA is construed narrowly. Elizabeth Raleigh hypothesized that it has “consistently been construed narrowly because it is the only part of the workers’ compensation scheme that allows an employee to recover damages” and that this “narrow construction is necessary to comply with the mandate of exclusivity.” Elizabeth A. Raleigh, *A Survey of Important Decisions of the Minnesota Supreme Court; The 1990–1991 Term*, 18 WM. MITCHELL L. REV. 262, 264 (1992).

### 3. *The Structure of the Workers' Compensation System*

A predicate to understanding what makes a civil action with a civil jury trial so novel under the WCA is an understanding of how the workers' compensation system operates—outside of civil courts and without jury trials.<sup>54</sup> If an employee suffers a work-related injury or illness, the employer files a First Report of Injury.<sup>55</sup> This commences the coverage process.<sup>56</sup> Then, without regard to fault,<sup>57</sup> the employer's insurer covers expenses such as wage loss, medical costs, disability benefits, and rehabilitation.<sup>58</sup> The employee cannot recover damages such as pain and suffering.<sup>59</sup> Most workers' compensation cases end here, but the case may progress into litigation if disputes persist.

Workers' compensation is a branch of administrative law, so the dispute is not handled by the courts.<sup>60</sup> The system is administered by the Workers' Compensation Division of the Minnesota Department of Labor and Industry.<sup>61</sup> In a contested case, the employee would initiate his or her claim by filing a Claim Petition,<sup>62</sup> which triggers a discovery process<sup>63</sup> and alternative

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54. See *Matheson v. Minneapolis St. Ry. Co.*, 126 Minn. 286, 297, 148 N.W. 71, 76 (1914) (discussing how although the state constitution secures the right to jury trial, where employers and employees are subject to the WCA, "they thereby waive a jury trial . . .").

55. *Workers' Compensation—Forms: First Report of Injury*, MINN. DEP'T LABOR & INDUS., <http://www.dli.mn.gov/WC/Fr01info.asp> (last visited Feb. 8, 2016).

56. *Id.*

57. But see Peter Nash Swisher, *Reassessing Fault Factors in No-Fault Divorce*, 31 FAM. L.Q. 269, 292 (1997) ("Remedial 'no-fault' legislation . . . is seldom truly 'no-fault' in nature. . . . [N]one of these . . . laws totally abolishes or abrogates a defendant's responsibility or accountability for his or her actions involving serious or egregious conduct.").

58. MINN. DEP'T OF LABOR & INDUS., MINNESOTA WORKERS' COMPENSATION TRAINING FOR EMPLOYERS 8–10 (Mar. 2015), [http://www.dli.mn.gov/WC/Pdf/wc\\_ertrainingguide.pdf](http://www.dli.mn.gov/WC/Pdf/wc_ertrainingguide.pdf).

59. MINN. HOUSE OF REPRESENTATIVES RESEARCH DEP'T, INFORMATION BRIEF: WORKERS' COMPENSATION 2 (1998) [hereinafter INFORMATION BRIEF], <http://www.house.leg.state.mn.us/hrd/pubs/workcomp.pdf>.

60. See, e.g., OFF. ADMIN. HEARINGS, <http://www.mn.gov/oah> (last visited Feb. 8, 2016).

61. MINN. DEP'T OF LABOR & INDUS., WORKERS' COMPENSATION DIVISION PROFILE 1 (2011), <http://www.dli.mn.gov/WC/Pdf/wcadminprofile.pdf>.

62. MINN. STAT. § 176.271 (2014) ("[A]ll proceedings under this chapter are initiated by the filing of a written petition on a prescribed form.").

63. *Workers' Compensation: Litigation Process*, MINN. DEP'T LABOR & INDUS.,

dispute resolution.<sup>64</sup> If the matter does not settle, there is a hearing before a compensation judge<sup>65</sup> at the Office of Administrative Hearings.<sup>66</sup> These judges are not bound by traditional procedural or evidentiary rules.<sup>67</sup> After the judge issues a decision, the parties can appeal to the Workers' Compensation Court of Appeals<sup>68</sup> and ultimately the Minnesota Supreme Court.<sup>69</sup>

Minnesota's workers' compensation system provides a streamlined administrative process, which aims to avoid the delays of traditional litigation and the inconsistencies of jury verdicts.<sup>70</sup> This structure, however, is geared towards straightforward personal injury cases.<sup>71</sup> The WCA provides tidy numerical formulas<sup>72</sup> to compensate a worker who loses a leg<sup>73</sup> or is exposed to toxic chemicals in the workplace.<sup>74</sup> The WCA does not contemplate, let alone calculate, the precise value of an intangible injury like retaliatory discharge.<sup>75</sup>

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<http://www.dli.mn.gov/WC/FaqLitigation.asp> (last visited Feb. 8, 2016).

64. *Workers' Compensation: Alternative Dispute-Resolution Services*, MINN. DEP'T LABOR & INDUS., <http://www.dli.mn.gov/WC/DispRes.asp> (last visited Feb. 8, 2016).

65. MINN. STAT. § 176.341.

66. INFORMATION BRIEF, *supra* note 59, at 7.

67. *Id.*

68. MINN. STAT. § 176.421.

69. INFORMATION BRIEF, *supra* note 59, at 10.

70. *Id.* (noting the uncertainty and unpredictability of the tort system for employees and employers alike).

71. *See* MINN. STAT. § 176.001 (referencing "the quick and efficient delivery of indemnity and medical benefits to *injured* workers" (emphasis added)).

72. *See, e.g., id.* § 176.101 (setting forth the compensation schedule, calculating weekly wages, valuing impairment ratings, etc.).

73. The WCA provides coverage for "personal injury," which encompasses both mental impairments and physical injuries that "aris[e] out of and in the course of employment." *Id.* § 176.011, subdiv. 16.

74. *See id.* § 176.66 ("The disablement of an employee resulting from an occupational disease shall be regarded as a personal injury within the meaning of the workers' compensation law.").

75. *See id.* § 176.001 (describing the intent of the legislature "to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers," without any mention of or allusion to compensating employees for non-physical problems).

C. *Retaliatory Discharge: An Evolving Cause of Action*

In addition to providing relief for on-the-job injuries, Minnesota's WCA contains a special provision in section 176.82 that prohibits employers from discharging an employee for seeking workers' compensation benefits.<sup>76</sup> This prohibition on retaliatory discharge<sup>77</sup> was enacted in 1975 and remains in effect today.<sup>78</sup> The statute creates an "action for civil damages,"<sup>79</sup> echoing other statutory rights of Minnesota employees to file civil suits for retaliatory discharge.<sup>80</sup> Because retaliatory discharge is the heart of section 176.82 claims, this note will briefly explore the history of the cause of action generally<sup>81</sup> as well as its development in the workers' compensation context specifically.<sup>82</sup>

1. *Retaliatory Discharge Generally*

Nowadays, retaliatory discharge causes of action are ubiquitous. For example, we take for granted that an employee cannot be fired for his or her race, sexuality, or age. However, the retaliatory discharge doctrine is a relatively recent development. In 1959, the groundbreaking California case of *Petermann v. International Brotherhood*<sup>83</sup> held that an employer's right to discharge an employee could be limited by statute or through considerations of public policy.<sup>84</sup> Prior to *Petermann*, the employment-at-will doctrine prevailed, giving employers a great deal of discretion in terminating employment relationships without much, if any,

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76. *Id.* § 176.82, subdiv. 1.

77. While the terms retaliatory discharge and wrongful termination are sometimes conflated, this case note relies on the more specific term "retaliatory discharge" to describe employees who are fired in retaliation for some particular act or refusal to act. *See* Abraham v. Cty. of Hennepin, 639 N.W.2d 342, 352 (Minn. 2002) (calling retaliatory discharge "one type of wrongful discharge").

78. Law of June 4, 1975, ch. 359, § 21, 1975 Minn. Laws 1188 (current version at MINN. STAT. § 176.82, subdiv. 1).

79. MINN. STAT. § 176.82, subdiv. 1.

80. *See, e.g., id.* § 181.932, subdiv. 1(1) (retaliation for whistleblowing); *id.* § 181.941, subdiv. 3 (retaliation for requesting parenting leave); *id.* § 181.9456, subdiv. 3 (retaliation for leave for organ donation); *id.* § 182.65, subdiv. 2(b)(9) (retaliation for making occupational safety and health complaint).

81. *See infra* Part II.C.1.

82. *See infra* Part II.C.2.

83. 344 P.2d 25 (Cal. 1959).

84. *Id.* at 27 (finding that employer could not fire employee for employee's refusal to commit perjury).

oversight from the legislature or the judiciary.<sup>85</sup> Although it was a landmark decision, *Petermann* “stood alone and ignored for many years.”<sup>86</sup> It was not until the 1980s that Minnesota courts began to carve away at the employment-at-will doctrine.<sup>87</sup>

The exceptions to at-will employment are either grounded in common law or enacted by statute.<sup>88</sup> The overwhelming majority of states<sup>89</sup> have what is known as a public policy exception<sup>90</sup> to the at-

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85. Minnesota’s employment-at-will doctrine is generally traced to *Skagerberg v. Blandin Paper Co.*, 197 Minn. 291, 302, 266 N.W. 872, 877 (1936). The general rule set out in *Skagerberg* is that employment “may be terminated by either party at any time, and no action can be sustained in such case for a wrongful discharge.” *Id.* The employer can fire an employee “for a good reason, for a bad reason, or for no reason at all.” *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 156 (Minn. 2014) (Wright, J., dissenting) (citing *Anderson-Johanningmeier v. Mid-Minn. Women’s Ctr., Inc.*, 637 N.W.2d 270 (Minn. 2002)). Despite a growing number of causes of action for retaliatory discharge or workplace discrimination, the Eighth Circuit is still reluctant for courts to become overinvolved in employee-employer relations. *See, e.g.*, *Hutson v. McDonnell Douglas Corp.*, 63 F.3d 771, 781 (8th Cir. 1995) (“[T]he employment discrimination laws have not vested in the federal courts the authority to sit as super-personnel departments reviewing the wisdom or fairness of the business judgments made by employers, except to the extent that those judgments involve intentional discrimination.”).

86. R. Scott Oswald & Michael Vogelsang Jr., *The ABCs of Common Law Wrongful Termination Claims in the Washington Metropolitan Region*, 3 LAB. & EMP. L.F. 197, 200 (2013).

87. *See Pine River State Bank v. Mettelle*, 333 N.W.2d 622, 629–30 (Minn. 1983) (“[W]here an employment contract is for an indefinite duration, such indefiniteness by itself does not preclude handbook provisions on job security from being enforceable . . .”). Nonetheless, the default presumption is still employment at-will: “The usual employer-employee relationship is terminable at the will of either . . .” *Cederstrand v. Lutheran Bhd.*, 263 Minn. 520, 532, 117 N.W.2d 213, 221 (1962); *see, e.g.*, *Ring v. Sears, Roebuck & Co.*, 250 F. Supp. 2d 1130, 1134 (D. Minn. 2003) (“Minnesota law preserves the long-standing presumption of at-will employment, under which an employer can dismiss an employee hired for an indefinite term at any time. Likewise, the employee is free to terminate their employment at any time.”).

88. Theresa Ludwig Kruk, Annotation, *Recovery for Discharge from Employment in Retaliation for Filing Workers’ Compensation Claim*, 32 A.L.R. 4th 1221 (2015).

89. *Dukowitz*, 841 N.W.2d at 159 (Minn. 2014) (Wright, J., dissenting) (citing HENRY H. PERRITT, JR., EMPLOYEE DISMISSAL LAW AND PRACTICE § 1.07 (5th ed. Supp. 2013) (surveying states)).

90. There is no universal agreement on the proper definition of “public policy.” The *Petermann* court, which adopted the public policy exception, explicitly noted that the term is “inherently not subject to precise definition.” *Petermann v. Int’l Bhd. of Teamsters of Am., Local 396*, 344 P.2d 25, 27 (Cal. 1959). The Illinois Supreme Court attempted to pin down this nebulous concept:

will presumption, a catchall cause of action that “arises every time an employee’s termination results from an employer’s violation of a clear mandate of public policy.”<sup>91</sup> Minnesota, however, has not embraced—either judicially or legislatively—this public policy exception.<sup>92</sup>

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[P]ublic policy concerns what is right and just and what affects the citizens of the State collectively. It is to be found in the State’s constitution and statutes and, when they are silent, in its judicial decisions. Although there is no precise line of demarcation dividing matters that are the subject of public policies from matters purely personal, a survey of cases in other States involving retaliatory discharges shows that a matter must strike at the heart of a citizen’s social rights, duties, and responsibilities before the tort will be allowed . . . . The cause of action is allowed where the public policy is clear, but is denied where it is equally clear that only private interests are at stake.

*Palmateer v. Int’l Harvester Co.*, 421 N.E.2d 876, 878–79 (Ill. 1981) (compiling cases nationwide where retaliatory discharge for violation of public policy has either been allowed or disallowed). The sources of public policy might include administrative agency rules, industry standards, codes of conduct, or even ethical codes. Geri J. Yonover, *Preemption of State Tort Remedies for Wrongful Discharge in the Aftermath of Lingle v. Norge: Wholly Independent or Inextricably Intertwined?*, 34 S.D. L. REV. 63, 73–74 (1989).

91. *Dukowitz*, 841 N.W.2d at 151.

92. Sarah C. Steefel, Case Note, *Pine River State Bank v. Mettill*, 333 N.W.2d 622 (Minn. 1983), 7 HAMLINE L. REV. 463, 474–75 (1984). In *Phipps v. Clark Oil & Refining Corp.*, the Minnesota Court of Appeals found the public policy exception to be “persuasive” and announced that an employer “is liable if an employee is discharged for reasons that contravene a clear mandate of public policy.” 396 N.W.2d 588, 592 (Minn. Ct. App. 1986). After the Minnesota Supreme Court granted review, but before it released its decision, the legislature announced the Whistleblower Act. *See Abraham v. Cty. of Hennepin*, 639 N.W.2d 342, 352 (Minn. 2002) (recounting history of the contemplated public policy exception). As such, the court no longer had to answer the policy-level question of whether or not to recognize a common-law action for wrongful discharge. *Phipps*, 408 N.W.2d at 571.

The *Dukowitz* case, decided before *Schmitz* in early 2014, revisited the public policy exception issue. *Dukowitz*, 841 N.W.2d at 148–49. The court again addressed the question in the context of a plaintiff terminated after applying for unemployment benefits and once again, the court declined to recognize a public policy exception. *Id.* at 148–49. The *Dukowitz* court was loath to legislate from the bench and usurp legislative power. *See id.* at 151–52. They exercised judicial restraint based on a confidence that “the legislative process[] is equipped to balance the competing interests of employers, employees, and the public.” *Id.* at 153–54. This deference to the legislative branch is particularly important in relation to the Minnesota Supreme Court’s analysis of legislative. *See infra* Part IV.C.

Instead of establishing a blanket prohibition on retaliatory discharge in the form of a public policy exception, the Minnesota legislature has enacted specific statutes, such as section 176.82, which carve out exceptions to the employment-at-will rule.<sup>93</sup> Conceptually, if the original employment-at-will doctrine were a slice of cheese, these carve-outs for retaliatory discharge would convert the slice into Swiss cheese. Although Minnesota courts still refer to employment at-will as the rule of thumb,<sup>94</sup> the profusion of exceptions (the holes in the Swiss cheese) has engulfed the rule. There are now so many exceptions that the exceptions have essentially become the rule.

The prima facie case for retaliatory discharge, whether a common-law or statutory cause of action, is the same: the employee must be exercising a constitutional or statutory right, the employee must have been discharged, and there must be a causal relationship between the aforementioned right and dismissal.<sup>95</sup> In Minnesota, if the plaintiff establishes a prima facie case, the burden then shifts to the defendant to furnish a non-retaliatory motivation for the discharge; if this burden is satisfied, the burden bounces back to the plaintiff to show that the non-retaliatory motive is pretextual.<sup>96</sup>

## 2. *Retaliatory Discharge in the Workers' Compensation Context*

The first recognition<sup>97</sup> of retaliatory discharge for exercising workers' compensation rights came in 1973 with the Indiana case

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93. Steefel, *supra* note 92, at 474 (compiling statutes that “create specific public policy limitations to the general rule”); *see also* McDaniel v. United Hardware Distrib. Co., 469 N.W.2d 84, 85 (Minn. 1991) (clarifying that section 176.82 is “not a codification of the common law” but rather an independent statutory cause of action enacted “more than a decade before this court recognized a common law action for retaliatory discharge”).

94. *See, e.g.,* Dukowitz, 841 N.W.2d at 150 (stating that “the employer-employee relationship is generally at-will”).

95. Love, *supra* note 48, at 566–67.

96. This burden shifting standard, familiar to most employment lawyers, is known as the *McDonnell Douglas* standard. *See* Graham v. Special Sch. Dist. No. 1, 472 N.W.2d 114, 119 n.7 (Minn. 1991) (“The three-step *McDonnell Douglas* test must be used in analyzing a retaliatory discharge claim.”) (citation omitted). The *McDonnell Douglas* standard applies to common-law and statutory claims alike. *See* Phipps v. Clark Oil & Ref. Corp., 408 N.W.2d 569, 571–72 (Minn. 1987) (common-law wrongful discharge claim); Snesrud v. Instant Web, Inc., 484 N.W.2d 423, 427–28 (Minn. Ct. App. 1992) (statutory wrongful discharge claim).

97. Some sources incorrectly suggest that “[t]he retaliatory discharge cause

*Frampton v. Central Indiana Gas Co.*<sup>98</sup> It was shortly thereafter that Minnesota passed section 176.82.<sup>99</sup> Some legal scholars opined that this was a long time coming,<sup>100</sup> but prior to 1973, several courts had declined to recognize the workers' compensation variety of retaliatory discharge.<sup>101</sup>

Approximately forty percent of the states recognize a similar cause of action today.<sup>102</sup> Where courts were reluctant to

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of action was initially devised by the courts to protect individuals filing for workers' compensation." Nancy K. Renfer, *Corporate Counsels' Lack of Retaliatory Discharge Action*, 10 N. ILL. U. L. REV. 89, 92 (1989). Yet, retaliatory discharge was recognized in other settings before it was extended to the workers' compensation context. See *supra* in Part II.C.1. It is more accurate to state that "[o]ne of the first bases for successful wrongful termination claims was in a workers' compensation [context]." Oswald & Vogelsang, *supra* note 86, at 200. Nonetheless, this extension to workers' compensation was surely logical. After all, what good are the statutory protections of a workers' compensation act if employees can be terminated for asserting those rights?

98. 297 N.E.2d 425, 427 (Ind. 1973) ("Prior to workmen's compensation, workers were faced with the harshness of the common law. The employee's only remedy was an action in tort against the employer—actions which were rarely successful . . . . Workmen's compensation statutes are in derogation of the common law and provide, for those covered, an exclusive remedy for injuries sustained 'in the course of' and 'arising out of' one's employment.").

99. See *supra* note 78 and accompanying text.

100. 6 ARTHUR LARSON, *THE LAW OF WORKMEN'S COMPENSATION* §§ 104–53 (2000) ("It is odd that such a decision was so long in coming."). Other commentators remarked on the timing of *Frampton* and speculated that perhaps Congress' recognition of a retaliatory discharge action in Title VII "paved the way" for *Frampton's* recognition of retaliatory discharge the workers' compensation setting. Love, *supra* note 48, at 554.

101. See, e.g., *Narens v. Campbell Sixty-Six Express, Inc.*, 347 S.W.2d 204 (Mo. 1961); *Christy v. Petrus*, 295 S.W.2d 122 (Mo. 1956); *Raley v. Darling Shop*, 59 S.E.2d 148 (S.C. 1950). The courts' rationale for rejecting this new cause of action was often judicial deference and a commitment to exclusivity of workers' compensation acts—the same principle that causes Minnesota courts today to be hesitant to recognize a broad public policy exception for retaliatory discharge. See, e.g., *Christy*, 295 S.W.2d at 127 ("We can hardly conceive of the legislature making such careful provision for the rights and compensation of injured employees covered by the Act and yet omitting a specific provision for recovery of damages for wrongful discharge if there had been any intent to create such a right.").

102. See 3 MODERN WORKERS COMPENSATION § 311:3, nn.14–15, Westlaw (database updated Nov. 2015) (compiling cases and statutes from nineteen states which provide a civil remedy for plaintiffs discharged in retaliation for asserting their workers' compensation rights). In approximately two-thirds of the states that recognize the cause of action, the source of the civil action is codified in a statute. See *id.* (outlining seventeen statutes and two cases). See generally Theresa Ludwig



acknowledge a common-law cause of action, the legislatures would authorize civil remedies.<sup>103</sup> Though the language of Minnesota's statute calls for a "civil action," it does not specifically invoke the right to a "civil jury trial."<sup>104</sup> There is a missing link between civil action and civil jury trial, and it is in this liminal space that *Schmitz* is situated.

### 3. *Jury Trials in Retaliatory Discharge Actions Generally*

Jury trials in other, non-WCA retaliation cases are also relevant to the historical background.<sup>105</sup> In *Abraham v. County of Hennepin*, the Minnesota Supreme Court found that employees had a constitutional right to a jury trial on their statutory wrongful discharge claims under the Whistleblower Act and Minnesota's Occupational Safety and Health Act.<sup>106</sup> The *Abraham* court traced the origins of wrongful discharge claims, which were historically tried to juries,<sup>107</sup> and found that the plaintiff's statutory retaliatory discharge claims, as a subcategory of wrongful discharge claims generally, had an attendant right to a jury trial.<sup>108</sup> Although the court may not have realized the long-term impact of this holding,

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Kruk, Annotation, *Recovery for Discharge from Employment in Retaliation for Filing Workers' Compensation Claim*, 32 A.L.R. 4th 1221 (2015) (collecting cases in which courts consider the retaliatory discharge in the workers' compensation context).

Notably, this issue of retaliatory discharge is generally seen as a state issue. Although certain employment law is legislated at a federal level, workers' compensation has been left to the states. There are less than a dozen cases at the Supreme Court involving retaliatory discharge in the context of workers' compensation benefits, and the Court's decisions generally emphasize deference to these state-run systems. *See, e.g.,* Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 411 (1988) (portraying the state law tort action for retaliatory discharge in workers' compensation context as a "separate font[] of substantive rights" that should not be preempted by other federal labor laws). *But see, e.g.,* Metro Live Ins. Co. v. Taylor, 481 U.S. 58, 61 (1987) (finding state retaliatory discharge claim to be preempted by Employee Retirement Income Security Act of 1974).

103. *See* Love, *supra* note 48, at 559.

104. *See* MINN. STAT. § 176.82 (2014).

105. For an interesting discussion of the uniqueness of retaliation claims, see David Sherwyn et al., *Experimental Evidence That Retaliation Claims Are Unlike Other Employment Discrimination Claims*, 44 SETON HALL L. REV. 455, 475–86 (2014).

106. 639 N.W.2d 342, 354 (Minn. 2002) (involving claims for retaliatory discharge under Whistleblower Act and Minnesota Occupational Safety and Health Act).

107. *Id.* at 350–51.

108. *Id.* at 352–54.

practitioners hypothesized that the logical extension of *Abraham* would entitle other retaliation plaintiffs to jury trials as well.<sup>109</sup>

*D. Jury Trials for Workers' Compensation Retaliatory Discharge Cases*

The previous three sections—dealing with jury trials, workers' compensation, and retaliatory discharge—can now be woven together into the matter at issue in *Schmitz*: jury trials in retaliatory discharge claims under the WCA.

Nationwide, many of the early workers' compensation retaliatory discharge cases involved jury trials.<sup>110</sup> But because Minnesota's statute does not explicitly mention jury trial, Minnesota courts struggled to interpret the meaning of "civil action." The earliest Minnesota cases involving section 176.82 claims never delved into the jury trial issue, resolving the controversies on other grounds<sup>111</sup> or by bench trial.<sup>112</sup> In 1987, the

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109. Peter Gray & Andrew E. Tanick, *Fresh Incentives to Whistle While You Work: Whistleblower Claims After the Abraham and Anderson-Johanningmeier Cases*, BENCH & B. MINN., Apr. 2002, at 23, 24 ("Extended to its logical conclusion, the *Abraham* holding indicates that plaintiffs seeking damages only under these [discrimination and retaliation] statutes are constitutionally entitled to a jury trial in state court—regardless of any contrary statutory provisions which, naturally, must give way to the superior weight of constitutional law."). In a way, it seems like some of these practitioners may have seen *Schmitz* coming down the pike a decade before the Minnesota Supreme Court granted certiorari. *See id.* (mentioning an impending "across-the-board expansion of the Minnesota wrongful discharge law").

110. Interestingly, many of these juries were very plaintiff-friendly. *See, e.g.*, *Meyer v. Byron Jackson, Inc.*, 207 Cal. Rptr. 663, 667 (Ct. App. 1984) (jury verdict in favor of employee); *Firestone Textile Co. Div., Firestone Tire & Rubber Co. v. Meadows*, 666 S.W.2d 730, 731 (Ky. 1983) ("The jury found for Meadows and assessed damages."); *Arie v. Intertherm, Inc.*, 648 S.W.2d 142, 145 (Mo. Ct. App. 1983) (jury verdict of \$7,500 in actual damages and \$17,500 in punitive damages); *Harless v. First Nat'l Bank in Fairmont*, 289 S.E.2d 692, 695 (W. Va. 1982) (jury verdict of \$40,000).

111. *See, e.g.*, *Morales v. Dain, Kalman & Quail, Inc.*, 467 F. Supp. 1031, 1041 (D. Minn. 1979) (finding temporal issue fatal to section 176.82 claims where employee filed workers' compensation claim nine months after discharge); *Wojciak v. N. Package Corp.*, 310 N.W.2d 675, 680 (Minn. 1981) (permitting employer to obtain insurance coverage for section 176.82 claims); *Schuyler v. Metro. Transit Comm'n*, 374 N.W.2d 453, 454 (Minn. Ct. App. 1985) (dismissing employee's section 176.82 claims because employee failed to exhaust remedies in collective bargaining agreement).

112. *See, e.g.*, *Jensen v. Hercules, Inc.*, 524 N.W.2d 748, 749 (Minn. Ct. App. 1994) (bench trial); *Randall v. N. Milk Prods., Inc.*, 519 N.W.2d 456, 458 (Minn. Ct. App. 1994) ("[T]he case tried to the court without a jury.").

Minnesota Supreme Court answered a certified question and held that a civil action brought under section 176.82 did not merge with a workers' compensation action for penalties under section 176.225 of the WCA.<sup>113</sup> At this juncture, all that was clear was that section 176.82 cases were civil actions that belonged in district court rather than the administrative workers' compensation realm.

Minnesota courts then entered an era in the early 1990s where they inexplicably began withholding jury trials in actions arising under section 176.82.<sup>114</sup> In 1995, the Minnesota Supreme Court intervened and indicated that a section 176.82 retaliatory discharge action was a common-law cause of action "outside the purview" of the WCA,<sup>115</sup> suggesting that the lower courts had been incorrect to deny plaintiffs jury trials.<sup>116</sup> This gave rise to passive acceptance of jury trials in section 176.82 cases<sup>117</sup> and eventually affirmative support of the same.<sup>118</sup>

Although generally workers' compensation claims are resolved by quasi-judicial compensation judges,<sup>119</sup> Minnesota courts have found a civil right to jury trial in other cases that originate in the WCA, namely certain subrogation claims.<sup>120</sup> It would therefore be a

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113. *Kaluza v. Home Ins. Co.*, 403 N.W.2d 230, 235 (Minn. 1987). This case is particularly relevant in that *Kaluza* passively acknowledges the separateness of the section 176.82 civil action from other actions arising under the WCA. *Accord Bergeson v. U.S. Fid. & Guar. Co.*, 414 N.W.2d 724, 727 (Minn. 1987) (portraying section 176.82 action as a "separate and distinguishable" remedy, which still "gives due deference to the exclusivity scheme of the [WCA]").

114. *See, e.g., Anderson v. Snap-On Tools, Inc.*, No. C8-93-1011, 1994 WL 6843, at \*1 (Minn. Ct. App. Jan. 11, 1994) ("Anderson was not entitled to a jury trial because his asserted claims fall under Minn. Stat. § 176.82."); *Snesrud v. Instant Web, Inc.*, 484 N.W.2d 423, 427 (Minn. Ct. App. 1992) (holding that a jury trial was not required because there was no underlying common-law cause of action); *Flaherty v. Lindsay*, 457 N.W.2d 771, 775 (Minn. Ct. App. 1990) ("Minn. Stat. § 176.82 does not specifically provide for a jury trial.").

115. *Karnes v. Quality Pork Processors*, 532 N.W.2d 560, 563 (Minn. 1995).

116. *See id.*

117. *See, e.g., Benson v. Nw. Airlines, Inc.*, 561 N.W.2d 530, 539 (Minn. Ct. App. 1997) (discussing a retaliatory discharge jury instruction).

118. *See, e.g., Brenden v. Westonka Pub. Sch.*, No. EM03-017571, 2005 WL 1936195, at \*8 (D. Minn. June 10, 2005).

119. *See supra* notes 66–67 and accompanying text.

120. *See Tyroll v. Private Label Chems., Inc.*, 505 N.W.2d 54, 57 (Minn. 1993). *But see Schmitz III*, 852 N.W.2d 669, 680 n.1 (Minn. 2014) (Anderson, J., dissenting) ("In *Tyroll*, the employer's right to subrogation, not the actual cause of action, was found in the [WCA]. This is a far different position than the case . . . in which the cause of action itself . . . was established by the WCA.").

mischaracterization to say that absolutely no right to jury trial exists for any claim connected to the WCA. Nonetheless, the default is still that WCA claims are resolved by a compensation judge, not a jury.<sup>121</sup>

Across this timeline, though, it is at least clear that the workers' compensation courts understood a section 176.82 civil action to mean a case within district court, separate from the administrative proceedings for on-the-job injuries.<sup>122</sup> The very limited commentary on the subject from the Workers' Compensation Court of Appeals on the matter makes no remark one way or the other as to whether a section 176.82 civil action implicates a civil jury trial.<sup>123</sup>

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121. See *supra* Part II.B.

122. This author searched the archives of the Workers' Compensation Court of Appeals (WCCA) in Minnesota for any and all decisions involving the term "176.82" to see how the WCCA perceived these claims. The court consistently acknowledged that such claims are venued in district court, not the workers' compensation system. See *Stange v. Dep't of Transp.*, No. WC05-101, 2005 WL 3451183, at \*12 (Minn. Work. Comp. Ct. App. Oct. 31, 2005) (stating that the WCCA "ha[d] appellate jurisdiction only, and ha[d] no authority to act" on employee's request for review of alleged retaliatory discharge under section 176.82); *Weidler v. Johanning Trans-Fare, Inc.*, No. WC05-147, 2005 WL 1901570, at \*3 (Minn. Work. Comp. Ct. App. June 30, 2005) (indicating that where a settlement foreclosed the possibility of section 176.82 claim, "the enforceability of such a closeout is to be determined by the district courts as opposed to the [WCCA]"); *Smith v. Receivable Mgmt. Sols., Inc.*, 2003 WL 783815, at \*2 n.1 (Minn. Work. Comp. Ct. App. Jan. 21, 2003) ("The civil penalties and punitive damages permitted under . . . § 176.82 . . . are arguably nonworkers' compensation benefits, although they are referenced under our statute.").

123. See *supra* note 122. What is interesting about this is that section 175A.01 states that the WCCA has jurisdiction over cases "aris[ing] under the workers' compensation laws of the state." MINN. STAT. § 175A.01 (2014). This creates jurisdictional tension, as the retaliatory discharge statute simultaneously arises within the WCA (where compensation judges have jurisdiction) while providing for a separate civil action in district court (where the compensation judges would not have jurisdiction). As a WCCA judge and staff attorney hinted after the 1995 amendments to section 176.82, more questions would "doubtless arise" from this tricky subdivision: "Must a compensation judge consider this issue when appropriate, and will findings in a workers' compensation proceeding have any impact on a subsequent civil action?" *Johnson & Wasson, supra* note 35, at 1532.

## III. THE SCHMITZ DECISION

A. *Facts and Procedural Posture*

Plaintiff Darrel Schmitz, who worked as a mechanic for U.S. Steel, first injured his back at work in October 2006.<sup>124</sup> He initially did not file a worker's compensation claim because a supervisor allegedly threatened to fire him if he did.<sup>125</sup> When a back injury at home in December 2006 exacerbated his troubles, Schmitz filed a claim in April 2007.<sup>126</sup> He was unable to work until October 2007, and even then he was given work restrictions.<sup>127</sup> U.S. Steel made no effort to allow Schmitz to return to work within his restrictions, ultimately terminating him in January 2008.<sup>128</sup>

Schmitz subsequently filed suit in May 2008.<sup>129</sup> He alleged that U.S. Steel discharged him in retaliation for seeking workers' compensation benefits, in violation of section 176.82, subdivision 1. He further alleged that U.S. Steel refused to offer him continued employment, in violation of subdivision 2.<sup>130</sup>

The case had a somewhat complicated history in the lower courts.<sup>131</sup> The district court initially granted summary judgment on all claims in favor of the defendant, U.S. Steel.<sup>132</sup> The court of appeals reversed in part, permitting Schmitz's claims for retaliatory discharge under the WCA to proceed.<sup>133</sup>

On remand, Schmitz amended his complaint to add a third claim under section 176.82 for threatening to discharge him in violation of subdivision 1.<sup>134</sup> The district court denied his demand

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124. *Schmitz III*, 852 N.W.2d 669, 671 (Minn. 2014).

125. *Id.*; see also Appellee's Brief & Addendum at 1–2, *Schmitz III*, 852 N.W.2d 669 (No. A12-0709), 2013 WL 9670848, at \*4.

126. Appellee's Brief & Addendum, *supra* note 125, at 2.

127. *Id.*

128. *Id.* at 8–9.

129. *Schmitz III*, 852 N.W.2d at 671.

130. *Id.* at 671–72; see also Appellee's Brief & Addendum, *supra* note 125, at 1.

131. See Appellant's Brief & Addendum at 1, *Schmitz III*, 852 N.W.2d 669 (No. A12-0709), 2013 WL 9670847, at \*1 (providing a timeline of relevant procedural history).

132. In addition to bringing claims under section 176.82 of the WCA, plaintiff asserted a disability discrimination claim under the Minnesota Human Rights Act. *Schmitz III*, 852 N.W.2d at 672.

133. *Schmitz v. U.S. Steel Corp. (Schmitz I)*, No. A10-0633, 2010 WL 4941668, at \*8 (Minn. Ct. App. Dec. 7, 2010).

134. *Schmitz III*, 852 N.W.2d at 672.

for jury trial on the three section 176.82 claims he had accrued.<sup>135</sup> After a bench trial, the district court found in favor of Schmitz on this recently added threat-to-discharge claim, but rejected his retaliatory discharge and refusal-to-offer-continued-employment claims.<sup>136</sup>

Both parties cross-appealed.<sup>137</sup> The court of appeals then reversed in part, finding in relevant part that the retaliatory discharge claims were entitled to a jury trial because they sought only money damages, making them legal rather than equitable.<sup>138</sup> Defendant appealed, and the Minnesota Supreme Court granted review to assess whether Schmitz had a right to a jury trial on his WCA retaliatory discharge claims.<sup>139</sup>

*B. The Majority Opinion: Affirming Abraham and Clarifying Breimhorst*

The right to a jury trial must either originate in the Minnesota Constitution or in the express language of a statute.<sup>140</sup> Admittedly, the language of section 176.82 makes no explicit provision for a “civil jury trial.”<sup>141</sup> To the *Schmitz* court, this was straightforward as can be: “The right to a jury trial . . . must arise from the Minnesota Constitution.”<sup>142</sup> Regrettably, there was not even a cursory discussion of the fact that the statute did not expressly provide for a jury trial. There was also no consideration of the alternative—that

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135. *Id.*

136. *Id.* The district court awarded Schmitz \$15,000 in damages for emotional distress; it further granted his motion for attorney fees in part, awarding an additional \$203,112. *Id.*

137. *Schmitz v. U.S. Steel Corp. (Schmitz II)*, 831 N.W.2d 656, 662 (Minn. Ct. App. 2013).

138. *Id.* at 677.

139. *Schmitz III*, 852 N.W.2d at 670. The Minnesota Supreme Court also addressed a secondary issue on appeal—whether an employer may assert a *Faragher/Ellerth* affirmative defense to vicarious liability for threat to discharge claims—which will not be discussed. *See id.* at 677–78. The court, “[p]roviding no additional comment,” ultimately declined to extend the *Faragher/Ellerth* defense beyond sexual harassment claims. Stephen F. Befort, *Retaliatory Discharge/Workers’ Compensation: Schmitz v. U.S. Steel Corp.* 852 N.W.2d 669 (Minn. 2014), in *THE 41ST ANNUAL LABOR & EMPLOYMENT LAW INSTITUTE* 16 (2014).

140. *Ewert v. City of Winthrop*, 278 N.W.2d 545, 550 (Minn. 1979).

141. *See* MINN. STAT. § 176.82 (2014).

142. *Schmitz III*, 852 N.W.2d 673 (“[T]he right to a jury trial in this case, if it exists, must arise from the Minnesota Constitution.”).

perhaps the statute did intend to provide for a jury trial, even if it did so implicitly rather than explicitly.<sup>143</sup>

Schmitz pursued the constitutional argument, asserting that because his claim was legal in nature (seeking monetary damages instead of equitable relief), he was entitled to a jury trial.<sup>144</sup> U.S. Steel pursued a statutory argument, maintaining that the legislature precluded the right to jury trial when it created a new set of rights and remedies under the WCA.<sup>145</sup>

The court ultimately sided with Schmitz and pursued a purely precedential argument.<sup>146</sup> The majority affirmed the continuing validity of *Abraham*, the analogous case involving retaliatory discharge under the Whistleblower Act.<sup>147</sup> *Abraham* had classified retaliatory discharge claims as actions at law that deserved jury trial.<sup>148</sup> In other words, even if a statute fails to codify the right to jury trial, the constitutional right to jury trial kicks in when the statutory cause of action is legal in nature.<sup>149</sup>

The court further clarified the meaning of *Breimhorst v. Beckman*,<sup>150</sup> a 1949 case that U.S. Steel relied upon for the exclusivity proposition.<sup>151</sup> In that case, the plaintiff argued that the WCA was void for denying her right to a jury trial on her personal injury claims.<sup>152</sup> The *Breimhorst* court disagreed, finding that the WCA gave her an adequate substitute remedy despite depriving her of a jury trial.<sup>153</sup> In essence, *Breimhorst* stood for the adequacy of the

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143. *See id.* (“Section 176.82 does not expressly provide such a right.”).

144. Appellee’s Brief & Addendum, *supra* note 125, at 11–12.

145. Appellant’s Brief & Addendum, *supra* note 131, at 11–12.

146. *See Schmitz III*, 852 N.W.2d at 674–77.

147. Befort, *supra* note 139, at 16.

148. *Schmitz III*, 852 N.W.2d at 676; *see supra* Part II.C.3 (discussing *Abraham*); *see also* Befort, *supra* note 139, at 16 (“The court determined that there was no reason to treat Schmitz’s retaliatory discharge claim any differently [than the retaliatory discharge claim in *Abraham*].”).

149. *Schmitz III*, 852 N.W.2d at 676–77 (“When a statutory cause of action is legal in nature . . . there is a constitutional right to jury trial. . . . [T]he right to a jury trial applies to all causes of action at law, regardless of whether the legislature has codified the cause of action.” (quoting *Abraham v. Cty. of Hennepin*, 639 N.W.2d 342, 354 (Minn. 2002))).

150. *Breimhorst v. Beckman*, 227 Minn. 409, 35 N.W.2d 719 (1949).

151. *Schmitz III*, 852 N.W.2d at 674 (framing Defendant’s reliance on *Breimhorst* as support for the “contention that a section 176.82 retaliatory discharge claim is part and parcel of the WCA’s comprehensive statutory scheme”).

152. *Breimhorst*, 227 Minn. at 434, 35 N.W.2d at 735.

153. *Id.* at 436, 35 N.W.2d at 736 (“[W]e cannot say that the workmen’s

exclusive remedy and the permissibility of disposing of jury trials in the workers' compensation context. The *Schmitz* court found this inapposite in the instant matter, as the retaliatory discharge damages were distinguishable from the workers' compensation benefits pursued in *Breimhorst*.<sup>154</sup> The court found that the fundamental sameness between section 176.82 retaliatory discharge claims and common-law retaliatory discharge overrode the exclusivity principle.<sup>155</sup>

The court's analysis ended with a brief plain language argument.<sup>156</sup> The court stated that civil actions are litigated in district court, so they are inherently beyond the exclusivity of the workers' compensation system that deprives plaintiffs of jury trials.<sup>157</sup> The opinion avoided further statutory considerations and seemingly jumped to the conclusion that the civil action described

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compensation act has not given plaintiff an adequate substitute remedy.”). One central component of the *Breimhorst* holding was that when the legislature replaces a common-law cause of action, which formerly involved the right to jury trial, with a “new, adequate, and fundamentally different remedy,” then “the legislature may withhold the right of jury trial.” *Id.* at 411–12, 35 N.W.2d at 723.

154. *Schmitz III*, 852 N.W.2d at 675 (calling *Breimhorst*'s claims “completely different” from *Schmitz*'s); *see also* Befort, *supra* note 139, at 16 (“The court was careful to differentiate *Schmitz*'s retaliatory discharge claim from general claims for workers' benefits that do not create an entitlement to a jury trial.”).

155. *Schmitz III*, 852 N.W.2d at 675–76 (“*Breimhorst* does not support the concurrence and dissent's position. There, the cause of action *was* new, adequate, and fundamentally different, but here the retaliatory discharge cause of action, while new to workers' compensation, is not fundamentally different than such causes of action under the common law. In actuality, it is fundamentally the same.”).

156. The court devotes a mere paragraph to the plain language considerations. *See id.* at 677; *cf.* David M. Driesen, *Purposeless Construction*, 48 WAKE FOREST L. REV. 97, 97 (2013) (suggesting that the U.S. Supreme Court increasingly emphasizes plain language and evades analysis of statutory purpose). Because the court concluded the language was plain and the meaning straightforward, the majority did not engage in statutory analysis to decipher the significance of “civil action” or speculate on the legislative purpose. *See Schmitz III*, 852 N.W.2d at 677.

157. *Schmitz III*, 852 N.W.2d at 677. Even this characterization of the court's holding involves some gap filling. Technically speaking, the court never links this exclusivity issue with the jury trial issue. *See id.* (“[C]ivil actions, which are litigated in district court, are outside the workers' compensation system and damages awarded on the claim do not constitute workers' compensation benefits.”). If anything, the court's limited statutory interpretation is for the sake of concluding that exclusivity does not govern.



in section 176.82 enjoys an inherent, concomitant right to a civil jury trial based on precedent alone.<sup>158</sup>

C. *Justice Anderson's Dissent*

Justice Anderson dissented in part, joined by Chief Justice Gildea and Justice Dietzen.<sup>159</sup> The dissenters thought the salient consideration was that the cause of action arose under the umbrella of the comprehensive workers' compensation scheme, which generally involves no right to a jury trial.<sup>160</sup> The dissent focused on the fact that the legislature did not explicitly provide for a "jury trial."<sup>161</sup> While the majority saw section 176.82 as expanding remedies available to plaintiffs beyond the bounds of the WCA,<sup>162</sup> the dissent instead saw this statutory retaliatory discharge action as a "unique remedy" constrained to the WCA.<sup>163</sup>

#### IV. ANALYSIS

Although the court ultimately came to the correct conclusion, it neglected a meaningful avenue of analysis: statutory interpretation.<sup>164</sup> The majority's heavy reliance on case law alone was misplaced considering the tumultuous history of inconsistent treatment of section 176.92 claims.<sup>165</sup> To clarify conflicting case law and more effectively compensate for the ambiguities in the WCA, the court could have engaged in statutory interpretation in addition to its analysis of precedent.<sup>166</sup>

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158. *See id.* at 674.

159. *See id.* at 678–83 (Anderson, J., dissenting).

160. *Id.* at 678.

161. *Id.*

162. Practitioners have hypothesized that expanding retaliatory discharge claims to district court may also expand the number of claims brought by plaintiffs. *Minnesota State Supreme Court Finds Right to Jury Trial for Worker Compensation Retaliation Claims*, 30 TERMINATION EMP. BULL. no. 10, Oct. 2014.

163. *Schmitz III*, 852 N.W.2d at 681 (Anderson, J., dissenting).

164. *See* John E. Simonett, *Rules of Statutory Construction and the Florida Election Law*, BENCH & B., July 2001, at 31, 33, <http://www2.mnbar.org/benchandbar/2001/jul01/essay.htm> (“[I]f the meaning of a statute is at issue, apply those interpretive canons that are appropriate to the situation to arrive at a meaning that is reasonable, honest with the language, and true to the statute’s purpose.”).

165. *See supra* notes 113–20 and accompanying text.

166. *See* 3B NORMAN SINGER & SHAMBIE SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 75:3 (7th ed. 2011) (“Courts construing workers’ compensation statutes, federal and state, employ the usual maxims of construction

Admittedly, the *Ewert* standard (providing that “[t]he right to a jury trial must be found either in the Minnesota Constitution or provided specifically by statute”) would seem to suggest that the constitutional route of analysis is appropriate in *Schmitz* because the statute does not explicitly provide for jury trial. While legally sound in theory, this *Ewert* standard is unworkable in practice. First and foremost, it presupposes that legislators know about the *Ewert* framework for jury trials. It further expects legislators to use magic words to provide for jury trials.<sup>167</sup> Although the separation of powers between the legislative and judicial branches provides checks and balances, it does little to ensure a mutual understanding of statutory construction and interpretation. Because the bifurcated *Ewert* standard is challenging for the legislature to apply, it is correspondingly problematic for the judiciary to rely on it. Setting the *Ewert* framework aside, statutory interpretation would have been a viable means to resolve the question of whether the legislature intended to provide for a jury trial in section 176.82 claims.

This section begins by establishing why it was an error for the court to gloss over the ambiguity of the term “civil action.”<sup>168</sup> It will then briefly explore two textual canons of construction<sup>169</sup> that would have been particularly useful here: *noscitur a sociis*<sup>170</sup> and *lex specialis*.<sup>171</sup> Finally, this note applies Justice Breyer’s purposive approach to statutory interpretation to *Schmitz* in an effort to incorporate the complex legislative purposes that lurk beneath the allegedly plain language of section 176.82.<sup>172</sup>

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. . . .”). *But cf.* Karl Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed*, 3 VAND. L. REV. 395, 401 (1950), (finding “two opposing canons on almost every point.”).

167. *But see, e.g.*, MINN. STAT. § 169.89, subdiv. 2 (2014) (“A person charged with a petty misdemeanor is not entitled to a jury trial but shall be tried by a judge without a jury.”); *Id.* § 117.165, subdiv. 1 (“In all eminent domain proceedings . . . the petitioner shall be entitled to a jury trial.”); *Id.* § 260B.163 (providing some juvenile hearings “shall be without a jury” whereas others include “the right to a jury trial on the issue of guilt.”); *Id.* § 611A.79, subdiv. 5 (“The right to trial by jury is preserved in an action brought under this section.”).

168. *See infra* Part IV.A.

169. “[C]anons of construction are never the masters of the courts, but merely their servants, to aid them in ascertaining the legislative intent.” *Ott v. Great N. Ry. Co.*, 70 Minn. 50, 55, 72 N.W. 833, 834 (1897) (Mitchell, J., dissenting).

170. *See infra* Part IV.B.1.

171. *See infra* Part IV.B.2.

172. *See infra* Part IV.C.

A. *The Court Erred in Finding Plain Meaning*

If the meaning of a statute is plain in its language, then courts need not engage in statutory interpretation;<sup>173</sup> rather, they must simply enforce the words of the statute as written.<sup>174</sup> Though the majority opinion devotes one paragraph to contemplating the plain language of the statute, it does little more than raise the issue and quickly conclude that civil actions, litigated in district court, are outside the workers' compensation system.<sup>175</sup> By only using the language of the statute to interpret the exclusivity issue, the court misses a meaningful opportunity to see what the statute's language might indicate about the jury trial issue.

Clearly the meaning of section 176.82 is not as plain<sup>176</sup> as the court makes it out to be.<sup>177</sup> After all, for nearly forty-five years

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173. See generally William N. Eskridge, Jr., *All About Words: Early Understandings of the "Judicial Power" in Statutory Interpretation, 1776–1806*, 101 COLUM. L. REV. 990, 1065–67 (2001) (providing an overview of statutory interpretation methods from 1500 to present).

174. *Caminetti v. United States*, 242 U.S. 470, 485 (1917).

175. *Schmitz III*, 852 N.W.2d 669, 677 (Minn. 2014) (citing *Karnes v. Quality Pork Processors*, 532 N.W.2d 560, 563 (Minn. 1995)).

176. Surely the legislature could have more carefully drafted section 176.82 to explicitly provide for both a "civil action" and a "civil jury trial." See Paul J. Zech, *Federal Pre-Emption and State Exclusive Remedy Issues in Employment Litigation*, 72 N.D. L. REV. 325, 347 (1996) ("Significant rights and defenses relating to employment should not be left to succeed or fail based on needless judicial harmonizing of statutes which could have been avoided merely by proper drafting and review of the policy considerations behind the legislation."). But, since the legislation itself was unclear, the court should have embraced the ambiguity and engaged in "judicial harmonizing of the statutes." See *id.*

177. This is not the first time that the Minnesota Supreme Court "took the easy way out" and glazed over ambiguities in favor of finding plain meaning. See, e.g., James Schoeberl, *Constitutional Law: How Minnesota Unconstitutionally Broadened Its Assisted-Suicide Statute—State v. Melchert-Dinkel*, 41 WM. MITCHELL L. REV. 398, 422 (2015) ("Minnesota's assisted-suicide statute does not define the term 'assist,' and the plain-meaning interpretation adopted by the court is inappropriate because assistance requires some physical action."); see also Max Radin, *Statutory Interpretation*, 43 HARV. L. REV. 863, 885 (1930) ("[I]f [judges] will play fast and loose with 'plain meanings' . . . they can not hope to convince laymen that they are acting rationally or usefully.").

Although this author lacked the time and resources to conduct further research on this issue, there may be a need for further empirical analysis. Perhaps this phenomenon of erroneously finding plain meaning extends beyond *Schmitz*. It would be interesting to see how frequently the court finds plain meaning and to consider whether this frequency has changed over time. For further guidance, see

Minnesota courts vacillated as to whether or not the civil action implicated a civil jury trial.<sup>178</sup> Additionally, section 176.82 arises under the umbrella of the WCA, which is bereft of jury trials altogether.<sup>179</sup> In light of these ambiguities, the case was ripe for statutory analysis.

*B. Textual Canons of Statutory Interpretation*

*1. Noscitur a sociis: "Civil Action" Elsewhere in the WCA and Retaliatory Discharge Statutes*

The maxim *noscitur a sociis* means "a word is known by the company it keeps."<sup>180</sup> In statutory interpretation, this means that when a word is ambiguous, its meaning can be ascertained by reference to its use throughout the statute or act.<sup>181</sup> The phrase "civil action" is used seven times in the WCA.<sup>182</sup> Sometimes the language even details "civil actions in district court."<sup>183</sup> This is significant because the term should have the same meaning throughout the WCA.<sup>184</sup> Though "civil action" is never defined,<sup>185</sup> these other seven uses shed light on the fact that the drafters understood the distinctiveness of civil actions and workers'

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Driesen, *supra* note 156, exploring a similar phenomenon in U.S. Supreme Court cases and suggesting that the Court increasingly evades statutory interpretation.

178. *Compare Karnes*, 532 N.W.2d at 563 (describing section 176.82 actions as "outside the purview" of the WCA), *with Humphrey v. Sequentia, Inc.*, 58 F.3d 1238, 1246 (8th Cir. 1995) ("[W]here a state legislature enacts a provision within its workers' compensation laws and creates a specific right of action, a civil action brought to enforce that right of action is, by definition, a civil action arising under the workers' compensation laws of that state . . ."). *See generally supra* notes 113–20 and accompanying text.

179. *See supra* notes 66–67 and accompanying text.

180. *See, e.g., Gregory v. Ashcroft*, 501 U.S. 452, 465 (1991).

181. *See, e.g., Jackson v. Mortg. Elec. Registration Sys., Inc.*, 770 N.W.2d 487, 496 (Minn. 2009).

182. MINN. STAT. §§ 176.145, 176.194, subdiv. 1, 176.295, subdiv. 2, 176.351, subdiv. 3, 176.411, subdiv. 2, 176.471, subdiv. 9, 176.511, subdiv. 4 (2014). The term is surely used numerous times in other Minnesota statutes, but the WCA is distinct and is therefore all that is examined.

183. *See* MINN. STAT. §§ 176.295, subdiv. 2, 176.351, subdiv. 3, 176.411, subdiv. 2.

184. Stephen Breyer, *On the Uses of Legislative History in Interpreting Statutes*, 65 S. CAL. L. REV. 845, 872 (1992) ("To change interpretive horses in midstream would defeat the expectations of the legislators who enacted a statute.").

185. *See* MINN. STAT. § 176.011.

compensation actions.<sup>186</sup> By providing for civil actions in district courts, the drafters left the door open to jury trials for section 176.82 claimants.

It is also useful to look to the language the legislature used in other retaliatory discharge acts. In the Whistleblower Act, for example, the statute only provides for a “civil action,” failing to expressly provide for a jury trial much like in section 176.82.<sup>187</sup> In the statute prohibiting retribution against pregnant employees, the remedies provision specifies the employee “may bring a civil action to recover any and all damages recoverable *at law*.”<sup>188</sup> At the bare minimum, juxtaposing these various retaliatory discharge statutes would have shown that providing for a “civil action,” and no more, is not incompatible with courts superimposing the right to a jury trial. The court should have engaged in this sort of comparative analysis of related statutes to buttress its finding that civil actions under section 176.82 are entitled to civil jury trials.

2. *Lex specialis: Specific Terms of Section 176.82 Trump the General Provisions of the WCA*

Another helpful Latin maxim of statutory interpretation is *lex specialis*, meaning “the specific trumps the general.”<sup>189</sup> In other words, a law governing a specific subject matter overrides a law that only governs general matters.<sup>190</sup> The court could have applied this principle in *Schmitz* to contend that the specific provisions of section 176.82, providing plaintiffs with a “civil action,” trump the general denial of jury trials in workers’ compensation matters.

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186. Section 176.145 states, “[N]otice . . . may be served . . . upon any agent of the employer upon whom a summons may be served in a civil action.” This suggests methods of service in civil actions are separate from, but bear on, service in WCA actions. Section 176.194, subdivision 1 similarly provides that “[e]vidence of violations under this section shall not be admissible in any civil action,” again indicating that typically WCA cases are separate from civil cases.

187. Compare MINN. STAT. § 181.935, with MINN. STAT. § 176.82, subdiv. 1.

188. MINN. STAT. § 181.944 (emphasis added).

189. See, e.g., *Rodgers v. United States*, 185 U.S. 83, 87–89 (1902); see also MINN. STAT. § 645.08(3) (“[G]eneral words are construed to be restricted in their meaning by preceding particular words.”).

190. *Varity Corp. v. Howe*, 516 U.S. 489, 522 (1996); *Rodgers*, 185 U.S. at 89 (“[T]he special must be taken as intended to constitute an exception to the general act or provision.”); *Fink v. Cold Spring Granite Co.*, 262 Minn. 393, 399, 115 N.W.2d 22, 26 (1962) (“It is the rule that specific provisions in a statute control general provisions.”).

While this alone would not resolve the case—after all, a civil action does not necessarily mean a civil jury trial—it lends support to the court’s holding and would have fortified its legal reasoning.

Analogous to *lex specialis* is the notion that the new trumps the old.<sup>191</sup> The WCA was enacted over sixty years before the legislature amended it to include section 176.82 claims.<sup>192</sup> Although the legislature desired to eliminate jury trials in all workers’ compensation cases when it was first enacted in 1913, the perspective had shifted by 1975 when section 176.82 was added.<sup>193</sup> The newer conception of employee rights envisioned that the outcome of employment disputes would be in the jury’s hands.<sup>194</sup> Section 645.08 directs courts that statutory canons of interpretation govern, but only to the extent that the interpretation is consistent with the intent of the legislature.<sup>195</sup> This would suggest that the *Schmitz* court could have devoted more attention to the more recent advent of employment laws, and that this legislative intent would have trumped the century-old purposes of the WCA as a whole.

### C. *A Purposive Approach to Statutory Interpretation*

Thus far, this case note has only considered textual canons of construction, which are far from infallible.<sup>196</sup> The court’s arsenal in

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191. See *Fink*, 262 Minn. at 399, 115 N.W.2d at 26 (“[I]f there is conflict between different statutes as to the same matter, the later statute prevails.”). The Latin maxim for this is *leges posteriores priores contrarias abrogant*. See *Watt v. Alaska*, 451 U.S. 259, 285 (1981) (Stewart, J., dissenting). However, it is generally used when two statutes are in direct conflict, in which case the newer controls. See, e.g., *Fink*, 262 Minn. at 399, 115 N.W.2d at 26.

192. See *supra* notes 31, 78.

193. Compare *supra* note 31, and *supra* note 33, with *supra* note 78, and *supra* note 87.

194. See *supra* note 109 and accompanying text.

195. MINN. STAT. § 645.08 (2014).

196. See *Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 65–66 (2004) (Stevens, J., concurring) (suggesting that “rote repetition” and “wooden reliance on those canons” of interpretation can cause unfair results); Thomas A. Bishop, *The Death and Reincarnation of Plain Meaning in Connecticut: A Case Study*, 41 CONN. L. REV. 825, 846 (2009) (“Even though the plain meaning rule, and the canons of construction more generally, have a substantial pedigree, their value as useful tools of interpretation has received substantial criticism.”); Richard A. Posner, *Statutory Interpretation—in the Classroom and in the Courtroom*, 50 U. CHI. L. REV. 800, 816 (1983) (“Vacuous and inconsistent as they mostly are, the canons do not constrain judicial decision making but they do enable a judge to create the

statutory interpretation is not limited to analyzing the words alone.<sup>197</sup> To do so would be to fall into the same trap as the *Schmitz* court when it analyzed case law but neglected the statute.<sup>198</sup> Interpreting the text in isolation is often insufficient to effectively elucidate the meaning of a statute.<sup>199</sup> One supplemental avenue of analysis is the purposive approach to statutory interpretation, which relies heavily on the underlying purpose of the legislation in construing the statutory language.<sup>200</sup>

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appearance that his decisions are constrained.”); Max Radin, *A Short Way with Statutes*, 56 HARV. L. REV. 388, 423 (1942) (“In all this what room is there for the standard ‘canons of interpretations,’ for *ejusdem generis*, *expressio unius*, and the entire coterie or band of phrases and tags and shibboleths which are so wearisomely familiar? I should be tempted to deny that they have ever resolved an honest doubt . . .”).

197. See *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687, 708 (1995) (portraying “text, structure, and legislative history” as a trio of interpretive sources).

198. The “trap” in statutory interpretation is when courts rely so heavily on textualism at the expense of purposive considerations. Textualism stands in stark contrast to purposivism, insisting that “judges should almost never consult, and never rely on, the legislative history of a statute.” William N. Eskridge, Jr., *Textualism, The Unknown Ideal?*, 96 MICH. L. REV. 1509, 1512 (1998). To analogize to contract interpretation, this “four-corners” view is arguably doomed at the outset—it “either den[ies] the relevance of the intention of the parties or presuppose[s] a degree of verbal precision and stability our language has not attained.” *Pac. Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.*, 442 P.2d 641, 644, 646 (Cal. 1968) (holding that the refusal to consider extrinsic evidence to aid in interpreting an indemnity clause constituted reversible error).

199. See, e.g., Donald G. Gifford et al., *A Case Study in the Superiority of the Purposive Approach to Statutory Interpretation: Bruesewitz v. Wyeth*, 64 S.C. L. REV. 221, 263 (2012) (“With today’s complex regulatory state, considering statutory text in a vacuum will not yield the true meaning of a statute, but considering legislative purpose will.”); see also Eskridge, *supra* note 173, at 990 (advocating “a sophisticated methodology that knit[s] together text, context, purpose, and democratic and constitutional norms in the service of carrying out the judiciary’s constitutional role”).

200. Gifford et al., *supra* note 199, at 224–25 (“After uncovering the purpose of the legislation, Justice Breyer *then* interprets the statutory language in a manner that fulfills these goals.”). In light of this, advocates of the purposive approach would likely find the temporal order of this note a bit confusing. They may have felt the topic of purposive approach should have preceded the other two canons considered here. Nonetheless, this author feels the strength of the purposive approach is best used as a supplement when textual considerations alone leave the analysis lacking. There seems to be no reason that the court could not turn to the purposive approach subsequently to supplement other canons and interpretive tools.

Notably, this purposive approach is largely objective,<sup>201</sup> looking broadly at the legislative context, as opposed to the subjective intents of particular drafters.<sup>202</sup> In a way, it personifies the statute, trying to look into the mind of the statute as opposed to the brains of the legislators.<sup>203</sup> At the same time, the purposive approach acknowledges the legislative body behind the statute; this aligns with the notion of judicial deference and the judicial branch serving as a “subordinate ‘honest agent’ of the legislative body.”<sup>204</sup> Although Justice Breyer is often credited with the purposive approach,<sup>205</sup> he is simply an advocate of what section 645.16 already enables the courts to consider.<sup>206</sup>

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201. This author notes the possibility that despite its objective intentions, the purposive approach could fall victim to the same subjectivity and judicial discretion as with the textual canons of interpretation. See Cass R. Sunstein, *Justice Breyer’s Democratic Pragmatism*, 115 YALE L.J. 1719, 1741 (2006) (mentioning “the difficulty of characterizing purposes . . . without an evaluative judgment of the interpreter’s own [purpose]”).

202. See Shannon Weeks McCormack, *Tax Shelters and Statutory Interpretation: A Much Needed Purposive Approach*, 2009 U. ILL. L. REV. 697, 730 (2009) (“A purposive approach, on the other hand, seeks to attribute a purpose to the law in question by looking at objective elements, such as the language of the statute and certain types of legislative history, to determine what the statute seeks to achieve. The question is not what particular drafters sought to achieve, but what the statutory language and legislative history show the statute seeks to achieve.”). *Contra* Posner, *supra* note 196, at 817 (“The judge should try to think his way as best he can into the minds of the enacting legislators and imagine how they would have wanted the statute applied to the case at bar.”).

203. See *Braschi v. Stahl Assocs. Co.*, 543 N.E.2d 49, 52 (N.Y. 1989) (suggesting that a statute is a creature in and of itself, and that “a court’s role is not to delve into the minds of legislators, but rather to effectuate the statute by carrying out the purpose of the statute as it is embodied in the words chosen by the Legislature.”). *But see* Sunstein, *supra* note 201, at 1739 (suggesting that legislative purpose cannot be found, and is instead always attributed to the legislature).

204. Carlos E. Gonzalez, *The 2006 David J. Stouffer Lecture: Statutory Interpretation: Looking Back, Looking Forward*, 58 RUTGERS L. REV. 703, 710 (2006) (“[W]hen interpreting statutes, agent courts should act on behalf of the legislative principal, rather than on their own behalf.”).

205. See, e.g., *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 243–44 (2011) (Breyer, J., concurring) (“[T]he textual question considered alone is a close one. . . . I would look to other sources, including legislative history, statutory purpose, and the views of the federal administrative agency. . . .”).

206. Although this note does not aim to provide a comprehensive history of statutory interpretation, it is interesting to have some historical perspective on the matter. “Throughout most of the twentieth century, the Court subscribed to the traditional purposivist framework,” as exemplified by the 1892 case *Holy Trinity*



Section 645.16 is, in many ways, a codification of this purposive approach.<sup>207</sup> It provides that “the object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.”<sup>208</sup> When a statute’s language is not entirely clear, courts can determine the statute’s meaning by considering various factors, such as (1) “the occasion and necessity for the law,” (2) “the circumstances under which it was enacted,” and (3) “the contemporaneous legislative history.”<sup>209</sup> This note will now examine these three sources in interpreting the statute at issue in *Schmitz*.

### 1. *The Occasion and Necessity for the Law*

First, the occasion and necessity for the law prohibiting retaliatory discharge was protecting workers and safeguarding their statutory right to workers’ compensation. Section 176.82 sought to protect workers from being fired for exercising their statutory right

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*Church v. United States*. John F. Manning, *The New Purposivism*, 2011 SUP. CT. REV. 113, 113 (2011); *see also* Holy Trinity Church v. United States, 143 U.S. 457, 459 (1892) (referencing the “spirit” and “intention” of the lawmakers). It was not until the final decade of the twentieth century that “statutory interpretation wars” began and the purposive model was challenged. Manning, *supra* note 206, at 113; Abbe R. Gluck, *The States as Laboratories of Statutory Interpretation: Methodological Consensus and the New Modified Textualism*, 119 YALE L.J. 1750, 1843–44 (2010).

207. *See* MINN. STAT. § 645.16 (2014). Although statutory interpretation occurs at the state supreme courts and the Supreme Court alike, much of the scholarly debate on statutory interpretation comes from federal law “where . . . no agreed methodological rules exist.” Amnon Lehavi, *Judicial Review of Judicial Lawmaking*, 96 MINN. L. REV. 520, 583 n.83 (2011). As a result, state courts can create and employ their own rules. *Id.* At one point, Connecticut had adopted the purposive approach in all matters of statutory interpretation, even when the language was unambiguous. *See* *State v. Courchesne*, 816 A.2d 562, 578 (Conn. 2003) (“[W]e ordinarily will consider all of those sources beyond the language itself, without first having to cross any threshold of ambiguity of the language.”). However, within a matter of months this was superseded by statute. *See* CONN. GEN. STAT. ANN. § 1–2z (West, Westlaw through 2015 Reg. Sess.) (“If . . . the meaning of [statutory] text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.”); *see also* *Paul Dinto Elec. Contractors, Inc. v. City of Waterbury*, 835 A.2d 33, 39 n.10 (Conn. 2003) (acknowledging that the Connecticut Supreme Court’s purposive approach had been legislatively overruled). As *Courchesne* demonstrates, while state courts are free to innovate in methods of statutory interpretation, they ultimately must answer to the state legislatures.

208. MINN. STAT. § 645.16.

209. *Id.*

to workers' compensation.<sup>210</sup> The right to compensation under the WCA would be meaningless if an employee could be fired for utilizing his or her benefits.<sup>211</sup> As part of the compensation bargain, employees gave up the right to traditional negligence actions, but they did not agree to suffer reprisal for exercising their legal right to compensation.

The legislature clearly viewed the threat of retaliatory discharge as a serious matter, so much so that the statute provides for punitive damages.<sup>212</sup> The threat of treble damages serves as a deterrent to employers, endeavoring to shield employees from retaliatory discharge.<sup>213</sup> The Minnesota Supreme Court has even commented on this connection between protecting employees and punishing employers in several prior section 176.82 cases.<sup>214</sup>

Looking at the necessity for the law would have helped the *Schmitz* court reinforce its holding that the exclusivity of the WCA did not govern and the salient consideration was instead workers' rights. To protect employees receiving benefits under the WCA, it makes sense to have a provision that provides for the oversight of the civil court system<sup>215</sup>—and the oversight of a jury, as well.

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210. *Id.* § 176.82.

211. *See* Deborah A. Schmedemann, *Fired Employees and/or Frozen-Out Shareholders (an Essay)*, 22 WM. MITCHELL L. REV. 1435, 1444 (1996) (“The premise of these statutes [prohibiting retaliatory discharge] is that rights guaranteed employees would be hollow if employers could terminate employees who assert statutory rights.”).

212. MINN. STAT. § 176.82 (“[P]unitive damages not to exceed three times the amount of any compensation benefit to which the employee is entitled”). The statute even provides for costs and reasonable attorney fees, which is further indicative of a worker-friendly purpose. *See id.* It also indicates that the damages awarded are not to be offset by workers' compensation benefits received. *Id.*

213. *See* Steefel, *supra* note 92, at 470 (“[T]he possibility of punitive damages being awarded will deter employers from discharging at-will employees who refuse to violate a statutory or constitutional provision.”); *see also* MINN. STAT. § 549.20 (“Punitive damages shall be allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others.”); *Kelsay v. Motorola, Inc.*, 384 N.E.2d 353, 359 (Ill. 1978).

214. *See, e.g.*, *Bergeson v. U.S. Fid. & Guar. Co.*, 414 N.W.2d 724, 727 (Minn. 1987) (discussing treble punitive damages as “a kind of damages reserved traditionally for conduct which is outrageous”); *Wojciak v. N. Package Corp.*, 310 N.W.2d 675, 680 (Minn. 1981) (viewing punitive damages as reflective of a dual “concern for employees' welfare” and “a desire to punish employers and deter them from the forbidden conduct.”).

215. *See* *Firestone Textile Co. v. Meadows*, 666 S.W.2d 730, 734 (Ky. 1984)

## 2. *The Circumstances Under Which the Law Was Enacted*

Second, the circumstances surrounding the enactment of section 176.82 reflect a broader commitment to prohibitions on retaliatory discharge. The statute was enacted during an era in which the legislature sought to protect workers' rights generally.<sup>216</sup> This emphasis on protecting individuals in the course of their employment, whether for whistleblowing or workers' compensation, was seen as an exception to the common-law rule of at-will employment. In the years leading up to and following the passage of section 176.82, the courts were increasingly willing to carve out exceptions to the doctrine.<sup>217</sup> Perhaps this can be extrapolated to support the proposition that the legislature was also willing to carve out an exception to the exclusivity principle of the WCA. The environment surrounding the enactment demonstrates that retaliatory discharge was an increasingly respected cause of action that merited protections, both from the legislature by way of statutes and from the judicial branch by way of case law.

## 3. *The Contemporaneous Legislative History*

Finally, the contemporaneous legislative history can provide valuable insight into the intent of the legislature.<sup>218</sup> Unlike analysis of legislative intent, which focuses solely on the purposes of the

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("The only effective way to prevent an employer from interfering with his employees' rights to seek compensation is to recognize that [the employee] has a cause of action for retaliatory discharge when the discharge is motivated by the desire to punish the employee for seeking the benefits to which he is entitled by law."); Ann-Marie Ahern, *Fight Back Against Retaliation*, TRIAL, June 2002, at 45 ("[W]orkers should not have to choose between their livelihoods and their health. If an employer can intimidate employees or punish them for seeking redress, then the employer could render workers' protection under those statutes null.").

216. See *supra* Part II.C.1–2.

217. See, e.g., *supra* note 93 and accompanying text.

218. See, e.g., *Brown v. Transcon Lines*, 588 P.2d 1087, 1091–93, 1095 (Or. 1978) (engaging in analysis of legislative history of statutes relating to unlawful employment practices before holding plaintiff was entitled to file common-law action for wrongful discharge). *But see* Adrian Vermeule, *Legislative History and the Limits of Judicial Competence: The Untold Story of Holy Trinity Church*, 50 STAN. L. REV. 1833, 1884 (1998) ("In other respects, however, consulting legislative history for evidence of general purpose may aggravate, rather than alleviate, the problem of judicial competence. . . . [E]vidence of general purpose in the legislative history often involves political, social, or economic problems that are nonlegal and highly controversial . . .").

legislators that took part in the drafting efforts, analysis of legislative history reveals broader purposes and intentions.<sup>219</sup> With regards to section 176.82, the legislative history is rather uncomplicated. Less than four months elapsed between its first reading and its passage,<sup>220</sup> and only two committees considered the legislation.<sup>221</sup> There is no record of contentious debate or any revisions during this time.<sup>222</sup> But this absence of history, in and of itself, may be indicative of the legislative support behind this newfound action for retaliatory discharge in the workers' compensation context. The lack of debate on the "civil action" versus "civil jury trial" matter may also suggest that the legislature simply assumed they could provide for a "civil action" and that the courts would automatically imbue this language with the right to civil jury trial, as jury trials were traditionally associated with other retaliatory discharge actions.<sup>223</sup> While the legislative history of section 176.82 may not be rich with information, the lack thereof speaks for itself.<sup>224</sup>

## V. OBSERVATIONS AND CONCLUSIONS

Courts have little to lose by engaging in statutory interpretation, particularly when the effort is concurrent with a careful consideration of case law. The legislature specifically

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219. See generally Vermeule, *supra* note 218, at 1883–85 (discussing two varieties of legislative intent—specific intent versus general legislative purpose); Radin, *supra* note 177, at 872 (criticizing legislative intent as “undiscoverable in fact, irrelevant if it were discovered . . . [and] a queerly amorphous piece of slag.”).

220. This author went to the Minnesota Historical Society Library in Saint Paul, Minnesota, to research the statute’s legislative history. The archival legislative records revealed that the bill was first read on February 20, 1975, and ultimately passed on June 5, 1975.

221. Section 176.82 was referred to the Committee on Governmental Operations on February 20, 1975, after its first reading. A Conference Committee on the matter was appointed on May 13, 1975.

222. Neither the House nor Senate Journals included any supplemental transcripts, audio taped discussions, committee minutes, or notes regarding debate within the committees or on the floor of the House or Senate.

223. See *supra* note 108 and accompanying text.

224. But see *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 530 n.13 (1985) (“[C]ongressional silence, no matter how ‘clanging,’ cannot override the words of the statute.”); *Ill., Dep’t of Pub. Aid v. Schweiker*, 707 F.2d 273, 277 (7th Cir. 1983) (“Not every silence is pregnant . . .”).

empowered the courts through section 645.16 to look at factors such as the necessity for the law, the circumstances of its enactment, and the related legislative history.<sup>225</sup> And as the Minnesota Supreme Court intelligently observed in *Karst v. F.C. Hayer Co.*, “If we have incorrectly defined the legislative intent, the legislature may quickly correct us.”<sup>226</sup>

Though section 176.82 carved out a civil action for plaintiffs in 1975, it was not until 2014 that the Minnesota Supreme Court confirmed that this civil action for retaliatory discharge under the WCA indeed includes the civil right to a jury trial, as well.<sup>227</sup>

What matters is not so much the jury trial itself—after all, very few cases actually get to trial<sup>228</sup>—but the image of getting to the jury. If a WCA retaliation case were to go to trial, the jury would likely be sympathetic to the plaintiff.<sup>229</sup> Retaliatory discharge adds insult to literal injury: first the plaintiff is hurt at work, and then he gets fired because of it. This would likely increase the settlement values of section 176.82 claims as the potential for a million dollar jury verdict<sup>230</sup> would presumably encourage employers to settle.

The flip side of this risk of high jury verdicts is that it may scare employers, who could be more apt to foreclose the possibility of section 176.82 retaliation claims when an employee settles his

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225. See *supra* Part IV.C.

226. 447 N.W.2d 180, 186 (Minn. 1989).

227. Law of June 4, 1975, ch. 359, §§ 21, 23, 1975 Minn. Laws 1188 (codified as amended at MINN. STAT. § 176.82, subdiv. 1 (2014)); *Schmitz III*, 852 N.W.2d 669, 677 (Minn. 2014).

228. Marshall H. Tanick, *Trial by Jury Arduous Attempts to Appropriate and Avert*, BENCH & B. MINN., Nov. 2012, at 25 (noting that “no more than 5 percent of all civil cases ever reach juries” and attributing this to the growing emphasis on alternative dispute resolution).

229. See Ahern, *supra* note 215, at 45 (“Unlike employment discrimination cases, retaliation cases involve motives that juries readily understand: The idea that an employer may want to rid its workforce of employees who file costly compensation claims is plausible to jurors who may see corporate America as greedy. Jurors are also quick to understand the highly offensive nature of retaliation. The idea that an employer could terminate an employee simply because he or she sought redress for a work-related injury offends fundamental notions of fairness.”).

230. Robin Potter, *Collateral Tort Claims in Employment Law—The Tort of Retaliatory Discharge*, in 1 ASSOCIATION OF TRIAL LAWYERS OF AMERICA CLE 363 (2000), 2000 WL 1120401 (“[T]he tort of retaliatory discharge[] has resulted in high verdicts and hotly litigated cases.”).

workers' compensation case.<sup>231</sup> In other words, settlement agreements within the administrative system may increasingly include provisions that the employee fully releases all future civil actions under section 176.82. This occasionally happened prior to *Schmitz*,<sup>232</sup> but employers may be inclined to do so more frequently due to the looming threat of large jury awards.

The impact of *Schmitz* should not be exaggerated, however. In the year since it was decided, it has only been cited by one Minnesota court in an unpublished opinion.<sup>233</sup> The *Schmitz* holding does not open the floodgates to an onslaught of retaliatory discharge claims, as plaintiffs still must prove not only wrongful termination, but the causal nexus to the exercise of workers' compensation rights.<sup>234</sup> Nonetheless, if a plaintiff can jump through these hoops, he has the potential to see a substantial jury verdict.<sup>235</sup>

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231. See MINN. STAT. § 176.521 ("The commissioner, a compensation judge, and the district court shall exercise discretion in approving or disapproving a proposed settlement."); see also MINN. DEP'T OF LABOR & INDUS., *supra* note 61 (discussing compromise and release agreements, also known as "stipulations for settlement").

232. See, e.g., *Weilder v. Johanning Trans-Fare, Inc.*, No. WC05-147, 2005 WL 1901570, at \*2 (Minn. Work. Comp. Ct. App. June 30, 2005) (reviewing employee's petition to vacate a stipulation for settlement that was executed solely to eliminate a close out of section 176.82 claims).

233. *McDonal v. SuperValu, Inc.*, No. A14-1228, 2015 WL 1401636, at \*1 (Minn. Ct. App. Mar. 30, 2015). *Schmitz* has technically been cited in two cases, but in one instance it was for an issue unrelated to the retaliatory discharge claims. See *Kaufenberg v. Winkley Co.*, No. A14-1514, 2015 WL 3539744, at \*4 (Minn. Ct. App. June 8, 2015) (citing *Schmitz* only for the *Faragher/Ellerth* issue).

234. See *Gary & Tanick*, *supra* note 109, at n.14 (discussing the floodgates concern after *Abraham*, which permitted jury trials for retaliatory discharge actions under the Whistleblower Act); James T. Mellon, *Michigan Worker's Compensation Retaliation Tort: Its Origin and Development*, 80 U. DET. MERCY L. REV. 61, 88-89 (2002) ("The cause of action is difficult for a plaintiff to prove because an employer rarely announces that the reason for the discriminatory conduct is in retaliation for the employee's asserting a right under the Michigan Worker's Disability Compensation Act.").

235. For example, one (admittedly outdated) survey showed that plaintiffs in wrongful termination suits in California received punitive damages averaging \$494,000. William B. Gould IV, *Stemming the Wrongful Discharge Tide: A Case for Arbitration*, 13 EMP. REL. L.J. 404, 406 (1987). However, the countervailing factor is that Minnesota's statute limits punitive damages to "three times the amount of any [workers'] compensation benefit to which the employee is entitled." MINN. STAT. § 176.82. Further diminishing this risk is the cost of litigation generally. See *Yonover*, *supra* note 90, at 93 ("It could cost an employee over \$10,000 just to get to trial; the judicial process is both expensive and lengthy.").

On a larger scale, the *Schmitz* decision is yet another case in the line of retaliatory discharge cases. It further entrenches employee rights by giving teeth to the statutory promise of a civil action. Although Minnesota does not have a general public policy prohibition on retaliatory discharge, cases like *Schmitz* contribute to an across-the-board expansion of wrongful discharge law in Minnesota. Hopefully *Schmitz* will signal to legislators how future statutes should be drafted to provide for civil jury trials in other retaliatory discharge statutes or other WCA causes of action.<sup>236</sup>

Though the court's conclusion is sound, its rationale is lacking. The Minnesota Supreme Court could have strengthened its analysis by not only reconciling the conflicting case law but also reconciling statutory ambiguities. Had the court bolstered its reasoning with the principles of statutory interpretation, it would have diminished the likelihood of further challenges to the meaning of section 176.82.

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236. See *Van Asperen v. Darling Olds, Inc.*, 254 Minn. 62, 74, 93 N.W.2d 690, 698 (1958) (“[T]he legislature must be presumed to have understood the effect of its words . . .”). Whether or not *Schmitz* will prove instructive and affect the legislature's drafting of future statutes remains to be seen, but without my rose-colored glasses on, I am less than optimistic about the prospect.