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# Templemire v. W&M Welding: Missouri's New Standard for Workers' Compensation Retaliation Claims Retaliates Against Stare Decisis

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**TEMPLEMIRE v. W&M WELDING: MISSOURI'S NEW STANDARD  
FOR WORKERS' COMPENSATION RETALIATION CLAIMS  
RETALIATES AGAINST *STARE DECISIS***

I. INTRODUCTION

The doctrine of *stare decisis* is the general policy of all courts to adhere to the ratio *decidendi* of prior cases decided by the highest court in a jurisdiction, as long as the principle derived therefrom is one that is still constant with reason.<sup>1</sup> *Stare decisis* is also of crucial importance to American courts, as Supreme Court Justice Sotomayor has stated that it promotes evenhandedness, predictability, and consistency in the legal system that fosters reliance on judicial decisions.<sup>2</sup>

For over thirty years, Missouri courts have honored the principle of *stare decisis* in interpreting Missouri workers' compensation laws.<sup>3</sup> Since 1978, Missouri courts have held that for a plaintiff to win a workers' compensation retaliation claim, the plaintiff had to show that the exercise of their rights was the exclusive cause of their firing.<sup>4</sup> Decades of employers and employees have relied on the consistency of this standard. However, the exclusive causation standard and *stare decisis* were randomly disregarded in early 2014, as *Templemire v. W&M Welding, Inc.* adopted the contributing standard for workers' compensation retaliation claims.<sup>5</sup>

To better understand the United States labor system, Part II of this Casenote reviews the history of employment-at-will in the United States. Part III discusses common law, federal, and Missouri state exceptions to the employment-at-will doctrine, concluding with the workers' compensation retaliation law that will be the focus of the remainder of this Casenote. Part IV reviews Missouri's judicial and legislative history of the workers' compensation retaliation laws and the dependence Missouri placed on the exclusive causation standard. Part V briefly discusses developments outside of workers' compensation that the *Templemire* majority focused on in overturning

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1. Frederick G. Kempin Jr., *Precedent and Stare Decisis: The Critical Years 1800-1850*, 3 AM. J. LEGAL HIST. 28, 28 (1959).

2. *Alleyne v. United States*, 133 S.Ct. 2151, 2164 (2013).

3. *See generally* *Mitchell v. United States*, 575 S.W.2d 813 (Mo. Ct. App. 1978), *Davis v. Richmond Special Rd. Dist.*, 649 S.W.2d 252 (Mo. Ct. App. 1983); *Hansome v. Northwestern Cooperage Co.*, 679 S.W.2d 273 (Mo. 1984), *and Crabtree v. Bugby*, 967 S.W.2d 66 (Mo. 1998).

4. *See generally* *Mitchel*, 575 S.W.2d 815.

5. *Templemire v. W&M Welding, Inc.*, 433 S.W.3d 371, 384 (Mo. 2014).

precedent. Part VI focuses on the *Templemire* decision and Part VII analyzes the decision and factors considered by both the majority and dissent of *Templemire*.

This Casenote will discuss that factors such as judicial and legislative developments outside of workers' compensation law do not offer a compelling reason to either uphold or repeal the exclusive causation standard in workers' compensation laws. However, due to the fact that the Missouri General Assembly did not offer an explicit causation standard within the statute, it was the duty of Missouri courts to interpret the statute and then uphold that decision in accordance with *stare decisis*. This Casenote will therefore demonstrate *Templemire's* disregard of over thirty years of precedent was unfounded, impulsive, and hypocritical.

## II. HISTORY OF EMPLOYMENT-AT-WILL

In nearly every jurisdiction in the United States, under the employment-at-will doctrine, an employer can discharge an employee without notice or cause, unless an employment contract specifies otherwise.<sup>6</sup> However, employment-at-will was not always the governing doctrine. At English common law, where the parties did not specify the duration of employer, the law presumed the duration to last for one year.<sup>7</sup> This presumption was based off the idea that injustice would result if masters could have the benefit of servants' labor during planting and harvest seasons, but discharge them to avoid supporting them during the unproductive winter.<sup>8</sup> A similar injustice would follow if servants who were supported during the hard season could leave their master when labor was most needed.<sup>9</sup> However, this one-year presumption could be rebutted if facts, such as the customs of the industry or the length of pay periods, showed the parties held a different intent.<sup>10</sup>

In the United States, English common law was largely followed, but the presumption of annual hiring was not generally adopted.<sup>11</sup> By 1870, courts were confused, as some courts adopted the English presumption and others disregarded it.<sup>12</sup> Thus, in 1877, a treatise writer, Horace Wood, developed a principle that would later be considered to be the source of the American employment-at-will rule.<sup>13</sup> Wood's principle stated that general or indefinite

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6. Jay M. Feinman, *The Development of Employment at Will Rule*, 20 AM. J. LEGAL HIST. 118, 118 (1976).

7. Clyde W. Summers, *Employment at Will in the United States: The Divine Right of Employers*, 3 J. BUS. L. 65, 66 (2013).

8. Feinman, *supra* note 6, at 120.

9. Feinman, *supra* note 6, at 120.

10. Summers, *supra* note 7, at 66.

11. Summers, *supra* note 7, at 66–67.

12. Summers, *supra* note 7, at 67.

13. Summers, *supra* note 7, at 67.

hiring would be considered to be at-will, unless a party could establish proof that stated otherwise.<sup>14</sup> Thereby, Wood's rule imposed a presumption that all hirings were at-will, not for one year.<sup>15</sup>

Wood's principle did not win immediate acceptance.<sup>16</sup> However, in 1985, New York adopted Wood's principle in *Martin v. New York Life Insurance Co.*, by holding that an indefinite hiring was presumed to be a hiring at-will.<sup>17</sup> The New York Court of Appeals gave credibility to Wood's principle, and by 1930, it became embedded in American law.<sup>18</sup>

With employment-at-will, employees were able to resign from positions they no longer cared to occupy and employers were permitted to discharge employees at their whim.<sup>19</sup> However, this equal footing between employers and employees began to erode in the second half of the 20<sup>th</sup> century.<sup>20</sup> Courts and legislatures began to recognize that employers often have advantages when negotiating with employees, and thus employees commonly feared being unable to protect their livelihood from unjust termination.<sup>21</sup>

### III. EXCEPTIONS TO EMPLOYMENT-AT-WILL

#### A. *Common Law Exceptions*

In the 1970s, courts were skeptical about the divine right of employers to fire employees at their will and began to limit the harshness of employment-at-will.<sup>22</sup> Thus, the courts created the three major common law exceptions to the employment-at-will doctrine: the public policy exception, the implied-contract exception, and the covenant of good faith and fair dealing exception.<sup>23</sup>

The most widespread exception, the public policy exception, prevents terminations for reasons that violate a state's public policy.<sup>24</sup> Although the

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14. Summers, *supra* note 7, at 67; Feinman, *supra* note 6, at 126.

15. Summers, *supra* note 7, at 67.

16. Summers, *supra* note 7, at 67. For example, in the 1891 case *Adams v. Fitzpatrick*, 26 N.W. 143, 145 (N.Y. 1891), the New York Court of Appeals applied the pay period presumption, stating: "In this country, at least, if a contract for hiring is at so much per month, it will readily be presumed that the hiring was by the month, even if nothing was said about the term of service." However, this court would accept Wood's principle four years later.

17. Feinman, *supra* note 6, at 128.

18. Summers, *supra* note 7, at 67-68.

19. Charles J. Muhl, *The Employment-at-Will Doctrine: Three Major Exceptions*, 124 U.S. BUREAU OF LAB. STAT. MONTHLY LAB. REV. 3, 3 (2001).

20. Muhl, *supra* note 19, at 4.

21. Muhl, *supra* note 19, at 3-4.

22. Summers, *supra* note 7, at 70.

23. Muhl, *supra* note 19, at 4.

24. Muhl, *supra* note 19, at 4. Forty-three of the fifty states recognize the public policy exception. Furthermore, the public policy exception is the only common law exception recognized by Missouri.

definition of public policy varies from state to state, most states narrowly limit the definition to clear statements that can be found in the state's constitution or statutes.<sup>25</sup> However, seventeen states, including Missouri, enable judges to broadly define a state's public policy, and are thus not confined by its constitution and statutes.<sup>26</sup> Examples of the public policy exception include protection of employees who were discharged for serving on a jury, who refused to join in employer's illegal practices, or who reported violations to public authorities.<sup>27</sup>

Some states recognize an exception to employment-at-will where an implied contract is formed between an employer and employee even though no formal, expressly written instrument regarding the relationship exists.<sup>28</sup> A common occurrence under this exception occurs when courts find that the contents of an employee handbook, such as statements that employees will be terminated only for "just cause," create implied contracts.<sup>29</sup>

The final judicial exception, the exception for a covenant of good faith and fair dealing, is only recognized by eleven states.<sup>30</sup> By far the broadest of the common law exceptions, this exception reads a covenant of good faith and fair dealing into every employment relationship.<sup>31</sup> Therefore, employers in those states are held to a "just cause" standard and all terminations made in bad faith are prohibited.<sup>32</sup>

#### B. Federal Exceptions<sup>33</sup>

Statutory exceptions to employment-at-will are also commonplace.<sup>34</sup> The 1960s was an era that introduced major federal legislative protections for employees, starting with the Civil Rights Act of 1964.<sup>35</sup> Title VII of the Civil Rights Act of 1964, which is applicable to employers with fifteen or more

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25. Muhl, *supra* note 19, at 7.

26. Muhl, *supra* note 19, at 7.

27. Summer, *supra* note 7, at 70–71.

28. Muhl, *supra* note 19, at 7. Thirty-eight of the fifty states recognize an exception where an implied contract exists. Missouri is in the minority of states that does not recognize this exception.

29. Muhl, *supra* note 19, at 7–8.

30. Muhl, *supra* note 19, at 10.

31. Muhl, *supra* note 19, at 10.

32. Muhl, *supra* note 19, at 10.

33. This Section seeks to outline major pieces of legislation that create exceptions to employment-at-will. This should not be interpreted as an exclusive list, but rather as one that highlights major legislation relevant to this Casenote.

34. Summers, *supra* note 7, at 77.

35. Muhl, *supra* note 19, at 3.

employees, protects employees against discrimination on the basis of race, color, national origin, sex, and religion.<sup>36</sup>

In 1967, the Age Discrimination in Employment Act (ADEA), which applies to employers with twenty or more employees, was enacted to protect individuals forty years or older from employment discrimination based on age.<sup>37</sup> The ADEA also mandates that it is unlawful to retaliate against an individual for opposing practices that discriminate based on age, filing a discrimination charge, or in any way participating in an investigation or proceeding under ADEA.<sup>38</sup>

Title I of the Americans with Disabilities Act of 1990 (ADA) prohibits employers with fifteen or more employees from discriminating against qualified individuals with disabilities.<sup>39</sup> According to the ADA, an individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.<sup>40</sup> Employers that qualify under that act are required to make a reasonable accommodation to the employee if it would not impose undue hardship on their business.<sup>41</sup>

In 1993, the Family and Medical Leave Act (FMLA) became applicable to private-section employers with fifty or more employees in twenty or more workweeks and all public agencies.<sup>42</sup> The FMLA provides eligible employees up to twelve weeks unpaid leave for any twelve month period for reasons including the birth and care of a newborn child, caring for a spouse, child, or parent with a serious health condition, and taking medical leave when the employee faces a serious health condition.<sup>43</sup>

Therefore, major federal exceptions to the employment-at-will doctrine include prohibiting firing employees on the basis of race, color, national origin,

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36. *Title VII of the Civil Rights Act*, SOC'Y FOR HUMAN RESOURCE MGMT., available at <http://www.shrm.org/legalissues/federalresources/federalstatutesregulationsandguidanc/pages/tileviiofthecivilrightsactof1964.aspx> (last visited Jan. 19, 2015).

37. *Age Discrimination in Employment Act of 1967*, SOC'Y FOR HUMAN RESOURCE MGMT., available at <http://www.shrm.org/legalissues/federalresources/federalstatutesregulationsandguidanc/pages/agediscriminationinemploymentactof1967.aspx> (last visited Jan. 19, 2015).

38. *Id.*

39. *Americans with Disabilities Act of 1990*, SOC'Y FOR HUMAN RESOURCE MGMT., available at <http://www.shrm.org/legalissues/federalresources/federalstatutesregulationsandguidanc/pages/americanswithdisabilitiesactof1990%28ada%29.aspx> (last visited Jan. 19, 2015).

40. *Id.*

41. *Id.* Undue hardship is defined as an action that requires significant difficult or expense when considering the employer's size, financial resources, and nature of operation.

42. *Family and Medical Leave Act*, SOC'Y FOR HUMAN RESOURCE MGMT., available at <http://www.shrm.org/templatestools/samples/policies/pages/fmlaleave%28withservicememberleaveexpansion%29.aspx> (last visited Jan. 19, 2015).

43. *Id.*

sex, religion, age (if over forty years old), disabilities that do not cause undue hardship, and certain eligible leaves of absence under the FMLA.

*C. Missouri Exceptions*<sup>44</sup>

The Missouri legislature codified the federal legislation of Title VII, ADEA, and ADA, with minor changes, in the Missouri Human Rights Act (HMRA).<sup>45</sup> The HMRA prohibits employment discrimination based on an individual's race, color, religion, national origin, ancestry, sex, disability that does not cause employers undue hardship, or age (if between forty and sixty-nine years old).<sup>46</sup> The Missouri HMRA is applicable to any employer with six or more employees.<sup>47</sup> Therefore, like in the federal statutes, Missouri recognizes exceptions to the employment-at-will doctrine when employees are fired based on discrimination classified in any of the above-listed categories.

Missouri also recognizes an exception to the employment-at-will doctrine by prohibiting employers from terminating employees for filing a workers' compensation claim.<sup>48</sup> In Missouri, employers with five or more employees must carry insurance to pay for medical treatment and lost time benefits for those who are injured in the course of their employment.<sup>49</sup> Section 287.780 of the Missouri Revised Statutes forbids employers from discharging or in any way discriminating against employees who exercise their rights to recover for their work injury or illness.<sup>50</sup> Therefore, retaliation for workers' compensation is a Missouri recognized exception to employment-at-will.

Although the principle that employers may not retaliate against employees for exercising their rights under workers' compensation laws seems straightforward, it has recently brought forward tremendous debate as the Missouri Supreme Court has struggled to maintain a standard by which an employee can win a claim against their employer for wrongful termination.

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44. Again, this Casenote is focused on major Missouri statutory exceptions to employment-at-will and the legislation discussed is in no way an exclusive list of protections provided to Missouri employees.

45. *Discrimination in Employment*, MO. DEP'T OF LABOR & INDUSTRIAL RELATIONS, available at <http://labor.mo.gov/mohumanrights/Discrimination/employment> (last visited Jan. 19, 2015).

46. *Id.*

47. *Id.*

48. MO. REV. STAT. §287.780 (2014).

49. *Facts for Injured Workers: Information about Workers' Compensation in Missouri*, DIVISION OF WORKERS' COMPENSATION, available at [https://labor.mo.gov/sites/default/files/pubs\\_forms/WC-101-AI.pdf](https://labor.mo.gov/sites/default/files/pubs_forms/WC-101-AI.pdf) (last visited Jan. 19, 2015).

50. MO. REV. STAT. §287.780 (2014).

## IV. MISSOURI'S HISTORY OF RETALIATION FOR WORKERS' COMPENSATION

A. *Missouri Courts*

In 1978, the Missouri Court of Appeals heard *Mitchell v. St. Louis County*, in which Mitchell alleged that she was discharged based upon her filing of a Chapter 287 workers' compensation claim.<sup>51</sup> Alternatively, St. Louis County cited excessive absenteeism as the reason for Mitchell's discharge.<sup>52</sup> For the six months preceding her discharge, Mitchell was absent seventy-six and a half hours of work, sixty-eight of which were attributed to her workers' compensation injury.<sup>53</sup> Mitchell conceded that she had also missed work for reasons unrelated to her injury, including missed bus connections, chills, sore throat, tooth extraction, bad weather, oversleeping, personal business, and gynecologist appointments.<sup>54</sup>

The court interpreted Missouri Revised Statutes Section 287.780 to say that a cause of action for retaliation for workers' compensation lies only if an employee is discharged discriminatorily by reason of exercising his or her rights under the workers' compensation law.<sup>55</sup> The court reasoned that there is nothing within the workers' compensation law indicating that an employee who has been injured and has returned to work may be absent repeatedly without penalty.<sup>56</sup> Thus, the Missouri court established an exclusive causation test to determine whether an employee was terminated in retaliation for exercising her or her rights under workers' compensation laws.

In 1983, the Missouri Court of Appeals declined an invitation to overturn the standard articulated in *Mitchell*.<sup>57</sup> In *Davis v. Richmond Special Rd. Dist.*, Davis was injured and attempted to return to work after receiving medical treatment.<sup>58</sup> At a regular meeting, the Commissioners voted to terminate Davis, and therefore Davis filed a lawsuit against the defendant for retaliation.<sup>59</sup> Davis urged the court to overturn *Mitchell*, and instead find that a claim under Section 287.780 is provable by inference premised by the fact that an employee was terminated after perusing their rights under workers' compensation laws.<sup>60</sup>

However, the court upheld *Mitchell*, concluding that under Section 287.780, there must be a causal relationship between an employee exercising

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51. *Mitchell v. St. Louis County*, 575 S.W.2d 813, 814 (Mo. Ct. App. 1978).

52. *Id.*

53. *Id.*

54. *Id.* at 814–815.

55. *Mitchell*, 575 S.W.2d at 815.

56. *Id.*

57. *Davis v. Richmond Special Rd. Dist.*, 649 S.W.2d 252, 255 (Mo. Ct. App. 1983).

58. *Id.* at 252–53.

59. *Id.* at 253.

60. *Id.* at 254.



her or her workers' compensation rights and the employee's discharge arising precisely from the employee's exercise of those rights.<sup>61</sup> The court declined to adopt a rule where a plaintiff would be relieved of the burden of showing that his or her discharge was the direct result of discrimination.<sup>62</sup> Davis was unable to prove that his discharge was the result of his exercising his workers' compensation rights. He could only show he was injured and was later discharged.<sup>63</sup>

In 1984, the Supreme Court of Missouri adopted the tests articulated in *Mitchell* and *Davis* in *Hansome v. Northwestern Cooperage Co.*<sup>64</sup> Hansome was injured in August 1977, received workers' compensation, and then received a discharge letter in October 1977.<sup>65</sup> A manager at Northwestern Cooperage told Hansome: "You got hurt on the job; you drew your Workers' Compensation. . .and I feel I just can't use any longer."<sup>66</sup> The Missouri Supreme Court adopted the standard articulated in *Mitchell* and *Davis*, and articulated a test that a plaintiff must be an employee of defendant before the injury, have exercised a right granted by Chapter 287, be discharged by their employer, and that there exist an *exclusive causal relationship* between plaintiff's actions and defendant's actions.<sup>67</sup> Therefore, the Missouri Supreme Court upheld the trial court's verdict for Hansome, holding that he was able to prove his burden under the exclusive causation standard.<sup>68</sup>

Over a decade after *Hansome*, the Missouri Supreme Court again upheld the exclusive causation standard in *Crabtree v. Bugby*.<sup>69</sup> Crabtree was injured at her job at Silver Maple Farms, received workers' compensation, and returned to work eight months later.<sup>70</sup> During Crabtree's absence, Silver Maple Farms hired a new supervisor, who did not get along with Crabtree.<sup>71</sup> Within an eight-day period, Crabtree received four disciplinary reports from her supervisor.<sup>72</sup> Shortly thereafter, Crabtree was terminated and claimed that her termination was in retaliation for filing a workers' compensation claim.<sup>73</sup>

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61. *Davis*, 649 S.W.2d at 255.

62. *Id.*

63. *Id.* at 256.

64. *Hansome*, 679 S.W.2d at 275 (Mo. 1984).

65. *Id.* at 274.

66. *Id.*

67. *Id.* at 275.

68. *Id.* at 276. The *Hansome* case, besides being the first case in which the Missouri Supreme Court adopted the exclusive causation test, is also a case that illustrates that the exclusive causation test, though difficult, is attainable for employees. *Hansome* presented sufficient evidence of retaliation and was therefore successful in winning his case.

69. *Crabtree*, 967 S.W.2d at 71 (Mo. 1998).

70. *Id.* at 69.

71. *Id.*

72. *Id.*

73. *Id.*

The Missouri Supreme Court yet again upheld the exclusive causation standard.<sup>74</sup> The court stressed that they should not lightly disturb their own precedent, stating that a possible disagreement by the current court with the statutory analysis of a predecessor court was not a satisfactory basis for violating the doctrine of *stare decisis*.<sup>75</sup> The court firmly stated that if there was an injustice, it would be for them to abandon the requirement that the discharge be exclusively caused by the exercise of rights pursuant to the workers' compensation law.<sup>76</sup>

The court also noted their concern of the adoption of a less stringent law, stating that under a lesser standard, an employee who admittedly was fired for tardiness, absenteeism, or incompetence at work would still be able to maintain a cause of action for discharge if the worker could persuade the fact-finder that one of the factors in their discharge was the exercise of rights under workers' compensation laws.<sup>77</sup> The court held that the purpose of the workers' compensation law was to compensate workers for *job-related injuries*, not to insure job security, and concluded that the exclusive causation standard best served that purpose.<sup>78</sup>

Therefore, the history of the court is clear. Beginning in *Mitchell* in 1978, and consistently through *Crabtree* in 1998, Missouri courts have upheld the exclusive causation standard.<sup>79</sup> The court in *Crabtree* strongly emphasized the problems of a lower standard, namely that employees who are tardy, absent, or incompetent would still have a cause of action if they also had a filed workers' compensation claim.<sup>80</sup> Furthermore, the *Crabtree* decision clarified that the principle of *stare decisis* required the court to consistently apply the exclusive causation standard.<sup>81</sup>

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74. *Crabtree*, 967 S.W.2d at 72.

75. *Id.* at 71–72.

76. *Id.* at 72.

77. *Id.* It should be noted that the concerns of the court here are very justified. The circumstances they are describing is the case that occurred in *Mitchell v. St. Louis County*, 575 S.W.2d 813 (Mo. Ct. App. 1978). There, Mitchell claimed workers' compensation retaliation after she missed work for reasons unrelated to her injury, including missed bus connections, chills, sore throat, tooth extraction, bad weather, oversleeping, personal business, and gynecologist appointments.

78. *Crabtree*, 967 S.W.2d at 72.

79. *Mitchell*, 575 S.W.2d at 815; *Crabtree*, 967 S.W.2d at 72.

80. *Crabtree*, 967 S.W.2d at 72.

81. *Id.* at 71–72.

### B. Missouri Legislature

In 2005, the Missouri legislature enacted a comprehensive reform of Chapter 287.<sup>82</sup> There were numerous revisions and additions to Chapter 287.<sup>83</sup> One amendment required work to be a prevailing factor rather than a substantial factor in causing the injury, meaning that employees had a higher burden of proving there was no other non-employment contributing factors to their injury.<sup>84</sup> Another amendment required that the accidents be identifiable by time and place of occurrence, meaning that injuries caused by repetitive actions or motions overtime would be excluded from workers' compensation.<sup>85</sup> However, in the numerous amendments that the 2005 Missouri legislature passed, the General Assembly did not discuss or in any way change the long-standing test of exclusive causation for retaliation cases.<sup>86</sup>

### V. DEVELOPMENTS OUTSIDE OF WORKERS' COMPENSATION

Two cases arose in 2007 and 2010, which although seemingly unrelated to workers' compensation and lawsuits for retaliation for workers' compensation, would come to have a large impact on workers' compensation lawsuits.

First, in 2007, the Missouri Supreme Court heard *Daugherty v. City of Md. Heights*. In *Daugherty*, a fifty-nine-year-old police captain was terminated, and had evidence that the city administrator was attempting to terminate employees over the age of fifty-five because their salaries were costly to the city.<sup>87</sup> Daugherty brought suit under the MHRA, which is an exception to employment-at-will doctrine, as it prohibits termination under many categories, including age if between the years of forty and sixty-nine.<sup>88</sup>

The Missouri Supreme Court noted that nothing in the statutory language of the MHRA required a plaintiff to prove that discrimination was a substantial or determining factor in an employment decision.<sup>89</sup> Therefore, the court interpreted the language of the MHRA to require a contributing factor standard, meaning that plaintiffs only had to show that consideration of age (or

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82. Patrick J. Platter, *History, Administration, and Jurisdiction, in* WORKERS' COMPENSATION LAW (4<sup>th</sup> ed. 2013), available at <http://www.mobarcle.org/bookstore/chapters/wc.pdf> (last visited Jan. 19, 2015).

83. See generally BRIAN STOKES, *Selected Issues in Workers' Compensation Law: 2005 Changes in the Law*, THE STOKES LAW OFFICE, available at <http://brianstokeslaw.com/index.php/reference-information/211-2005-changes-to-worker-compensation-law> (last visited Jan. 19, 2015).

84. N. Drew Kemp, Note, *Exclusively Confusing: Who Has Jurisdiction to Determine Jurisdiction Under the Missouri Workers' Compensation Law?*, 78 MO L. REV. 897, 904 (2013).

85. Kemp, *supra*.

86. *Templemire v. W&M Welding, Inc.*, 433 S.W.3d 371, 389–90 (Mo. 2014).

87. *Daugherty v. City of Md. Heights*, 231 S.W.3d 814, 816–17 (Mo. 2007).

88. *Id.* at 816; *Discrimination in Employment, supra* note 45.

89. *Daugherty*, 231 S.W.3d at 819.

other protected characteristics) contributed to their unfair treatment.<sup>90</sup> The court did not in any way discuss workers' compensation within the *Daugherty* opinion.

Second, in 2010, the Missouri Supreme Court heard *Fleshner v. Pepose Vision Inst.*, which discussed the public policy exception to employment-at-will.<sup>91</sup> *Fleshner* received a telephone call from the United States Department of Labor, who was investigating Pepose Vision to determine whether or not they failed to pay employees for overtime.<sup>92</sup> *Fleshner* complied with the investigator and was terminated after reporting the call to her supervisor.<sup>93</sup> As *Fleshner* was the first time in which Missouri recognized the public policy exception to employment-at-will, the Missouri Supreme Court had to decide whether the casual standard for public policy exceptions should be the exclusive causation standard that was articulated in retaliation for workers' compensation cases.<sup>94</sup>

The court decided to reject the exclusive causation standard for cases of public policy and instead adopted a contributing factor standard, similar to the *Daugherty* standard.<sup>95</sup> The Missouri Supreme Court clarified that although exclusive causation was not the proper standard for wrongful discharge on public policy exceptions to employment-at-will, it *was* the appropriate standard for cases asserting retaliation from workers' compensation.<sup>96</sup> Therefore, while adopting a different standard for public-policy exceptions, in 2010, the Missouri Supreme Court upheld the long-existing exclusive causation standard for workers' compensation retaliation cases.<sup>97</sup>

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90. *Id.* In fact, the *Daugherty* decision upholds *stare decisis*, as it cites many cases in its reasoning for explicitly adopting contributing factor. In *Midstate Oil Co. Inc. v. Mo. Comm'n on Human Rights*, the court looked to whether a defendant's conduct was "motivated" by an invidious purpose. *Midstate Oil Co. Inc. v. Mo. Comm'n on Human Rights*, 679 S.W.2d 842, 845 (Mo. 2004). In *McBryde v. Ritenour Sch. Dist.*, the court stated that given the similarity between the definition of "motivating" and "contributing," they were not persuaded that motivating factor is a higher threshold than contributing factor, and held that under the MHRA plaintiffs only needed to demonstrate that discrimination was a contributing factor in the employment decision. *McBryde v. Ritenour Sch. Dist.*, 207 S.W.3d 162, 170 (Mo. Ct. App. 2006)

91. Muhl, *supra* note 19 at 4; *Fleshner v. Pepose Vision Inst.*, 304 S.W.3d 81, 91 (Mo. 2010).

92. *Fleshner*, 304 S.W.3d at 86.

93. *Id.*

94. *Id.* at 92.

95. *Id.* at 93–94.

96. *Fleshner*, 304 S.W.3d at 93.

97. *Id.*

VI. *TEMPLEMIRE* CHANGES EVERYTHINGA. *Majority*

In 2014, *Templemire v. W&M Welding, Inc.* uprooted nearly thirty-five years of precedent when the Missouri Supreme Court suddenly decided to change the causal standard for workers' compensation cases. In January 2006, Templemire was injured when a large metal beam fell from a forklift and crushed his foot.<sup>98</sup> He was cleared to return to work about a month later on light duty and W&M Welding accommodated Templemire by creating light duty assignments for him.<sup>99</sup> In November 2006, on the day in question, the defendant received a request to have a railing washed and picked up.<sup>100</sup>

There are two different narratives of what occurred next. According to W&M Welding, Templemire was directed to wash the railing immediately, but two hours later the railing was still unwashed and Templemire was taking a break.<sup>101</sup> W&M Welding claimed that Templemire stated that he was taking a break for his foot and if the owner did not like it, he could take it up with Templemire's physician.<sup>102</sup> Templemire was then fired for insubordination.<sup>103</sup>

However, Templemire stated that he was told the railing would not be ready until later in the afternoon.<sup>104</sup> Templemire claimed that as he went towards the wash bay to wash the railing, he stopped to rest his infected foot and was then confronted by the owner of W&M Welding.<sup>105</sup> Templemire asserted that he tried to explain the events, but was discharged immediately.<sup>106</sup>

In his lawsuit, Templemire, like many previous plaintiffs, petitioned the court to change the causation standard for workers' compensation retaliation cases to contributing factor instead of exclusive causation.<sup>107</sup> The court discussed the previous history of retaliation for workers' compensation. They noted *Mitchell*, where the Missouri Court of Appeals stated that a cause of action existed only if an employee was discharged by reason of exercising his or her rights under the workers' compensation laws.<sup>108</sup> The court also discussed the opinion in *Davis*, which stated that an employee's discharge by his employer must arise precisely from the employee's exercise of his or her

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98. *Templemire v. W&M Welding, Inc.* 433 S.W.3d 371, 373 (Mo. 2014).

99. *Id.* at 373–74.

100. *Id.* at 374.

101. *Id.*

102. *Templemire*, 433 S.W.3d at 374–75.

103. *Id.* at 375.

104. *Id.* at 374.

105. *Id.*

106. *Id.*

107. *Templemire*, 433 S.W.3d at 376.

108. *Id.* at 377 (citing *Mitchell*, 575 S.W.2d at 815).

rights, and therefore employees must prove a causal relationship between their discharge and the exercise of his or her rights.<sup>109</sup>

The court also recognized the test that it made years prior in *Hansome*, that the plaintiff must have had status as employee before the injury, have exercised his or her rights granted under Chapter 287, be discharged by their employer, and that an exclusive causal connection must exist between plaintiff's actions and defendant's actions.<sup>110</sup> Furthermore, the court noted its decision in *Crabtree*, which stated that exclusive causation should remain the standard because the court should not lightly disturb its own precedent and mere disagreement by the current court would not be a satisfactory basis for violating *stare decisis*.<sup>111</sup>

However, the Missouri Supreme Court then stated that their recent decision in *Fleshner v. Pepose Vision Inst.* questioned *Hansome* and its progeny.<sup>112</sup> The court held that after thirty-five years of precedent, they would disregard the exclusive causation standard and would adopt the contributing factor standard for workers' compensation retaliation cases.<sup>113</sup>

The majority looked to the language of Missouri Revised Statutes Section 287.780, which states: "No employer or agent shall discharge or in any way discriminate against any employee for exercising any of his or her rights under this chapter."<sup>114</sup> The court stated that because the language uses the phrase "in any way" the legislature clearly intended the application of a contributing factor standard and this standard better fulfilled the purpose of the statute.<sup>115</sup> The court did not find it persuasive that in 2005 the Missouri General Assembly failed to articulate a new standard for workers' compensation retaliation cases.<sup>116</sup> They classified the 2005 reform as inaction, which could not be interpreted to be approval of the court's reading of a statute.<sup>117</sup>

Regarding to the doctrine of *stare decisis*, the court noted that although the doctrine promotes security in the law, adherence to precedent is not absolute.<sup>118</sup> The court stated that where it appears that an opinion is clearly erroneous and manifestly wrong, the rule of *stare decisis* is never applied to

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109. *Id.* (citing *Davis*, 649 S.W.2d at 255).

110. *Id.* at 377–378 (citing *Hansome*, 679 S.W.2d at 275).

111. *Templemire*, 433 S.W.3d at 378 (citing *Crabtree*, 967 S.W.2d at 71–72).

112. *Templemire*, 433 S.W.3d at 378.

113. *Id.* at 384.

114. MO. REV. STAT. § 287.780 (2014).

115. *Templemire*, 433 S.W.3d at 384.

116. *Id.* at 380.

117. *Templemire*, 433 S.W.3d at 380, (citing *Med. Shoppe Int'l Inc. v. Dir. of Revenue*, 156 S.W.3d 333, 334, 335 (Mo. 2005)).

118. *Templemire*, 433 S.W.3d at 379 (citing *Independence-Nat'l Educ. Ass'n v. Independence Sch. Dist.* 223 S.W.3d 131, 137 (Mo. 2007); *Med. Shoppe*, 156 S.W.3d at 334–35).

prevent the repudiation of such a decision.<sup>119</sup> Then, without much discussion, the court held that its own rulings in *Hansome* and *Crabtree* were clearly erroneous and thus *stare decisis* would not be applicable to workers' compensation retaliation cases.<sup>120</sup>

### B. Dissent

The dissent in *Templemire* criticized many aspects of the majority's decision. First, the dissent objected to the majority's application of *Fleshner*.<sup>121</sup> The majority held that the decision in *Fleshner* supports abandoning the exclusive cause standard established in *Hansome* and *Crabtree*.<sup>122</sup> However, in examining the *Fleshner* opinion, the dissent noted that *Fleshner* rules on the public policy exception to the employment-at-will doctrine, not to workers' compensation retaliation claims.<sup>123</sup> The dissent emphasized that the holdings in *Hansome* and *Crabtree* were not based on judicially created common law doctrine, as was *Fleshner's* interpretations on public policy.<sup>124</sup> Rather, *Hansome* and *Crabtree* were interpretations of a Missouri statute on which the General Assembly is presumed to rely and to which the court should give the greatest deference to *stare decisis*.<sup>125</sup>

Next, the dissent stated that there was a strong argument of legislative reliance on *Hansome* and *Crabtree*.<sup>126</sup> In 2005, the General Assembly overhauled the workers' compensation laws, and the dissent argued that the legislature took affirmative steps to retain the exclusive causation standard for workers' compensation retaliation claims.<sup>127</sup> While the General Assembly expressly abrogated prior cases of the Missouri Supreme Court by name and citation, they did not in any way mention the decisions in *Hansome* and *Crabtree*.<sup>128</sup> Unlike the majority, the dissent believed the amendments were significantly more than legislative inaction.<sup>129</sup> The dissent reasoned that the

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119. *Templemire*, 433 S.W.3d at 379 (citing *Novak v. Kansas City Transit, Inc.* 365 S.W.2d 539, 546 (Mo. 1963)).

120. *Templemire*, 433 S.W.3d at 380. In a footnote, the court indulges in a slippery-slope line of reasoning that strict adherence to *stare decisis* would result in a society that separated schoolchildren on the "separate but equal" doctrine that prohibited interracial marriage and that forbade women from serving on juries; *Id.* at 380 n.90. Indeed, these evils needed to be corrected, but the court fails to articulate a principled framework for determining when *stare decisis* should be abandoned.

121. *Templemire*, 433 S.W.3d at 389.

122. *Id.* at 378, 389.

123. *Id.* at 389.

124. *Id.*

125. *Templemire*, 433 S.W.3d at 390.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Templemire*, 433 S.W.3d at 390.

legislature's decision not to repeal the exclusive causation standard was the General Assembly's affirmative support of the exclusive causation standard.<sup>130</sup>

Finally and most importantly, the dissent strongly stressed the importance of *stare decisis*, stating: "What makes this country's legal system the envy of the modern democratic world, and what sets it apart from most others, is the reliability of the outcome of cases based on the doctrine of *stare decisis*."<sup>131</sup> The dissent noted the decision in *Crabtree*, which stressed that the court should not lightly disturb its own precedent due to mere disagreement by the current court with the analysis of a predecessor court.<sup>132</sup> The dissent stated that, in the sixteen years since *Crabtree*, nothing has changed within the court other than its membership.<sup>133</sup> The dissent stressed that the doctrine of *stare decisis* has little practical or intellectual value if all it takes to change the law was the passage of time and court membership.<sup>134</sup>

Therefore, due to the distinction between workers' compensation retaliation cases and public policy exception cases, the legislature's decision not to abrogate the exclusive causation standard for workers' compensation retaliation cases, and the doctrine of *stare decisis*, the dissent wholeheartedly rebuked the majority's divergence from the exclusive causation standard.

## VII. ANALYSIS

### A. *The Effect of Fleshner on Templemire*

In *Templemire*, the court disagreed on the effect that *Fleshner* should have upon workers' compensation retaliation cases. The majority stated that workers' compensation retaliation case law remained unquestioned until the decision reached in *Fleshner v. Pepose Vision Institute*.<sup>135</sup> The court held that there can be no tolerance for employment discrimination in the workplace, be it based upon protected classes such as gender, race, or age [*Daugherty*], or an employee blowing the whistle on an employer's illegal practices in violation of public policy [*Fleshner*], or for exercising workers' compensation rights.<sup>136</sup>

However, the dissent disagreed completely with the majority's analysis.<sup>137</sup> The dissent noted a key distinction between public policy claims and workers' compensation retaliation cases, namely that public policy termination claims arise under the common law of torts.<sup>138</sup> The dissent stated that the holdings in

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130. *Id.*

131. *Id.* at 386.

132. *Templemire*, 433 S.W.3d at 386 (citing *Crabtree*, 967 S.W.2d at 71).

133. *Id.* at 386–87.

134. *Id.*

135. *Id.* at 378.

136. *Id.* at 384.

137. *Templemire*, 433 S.W.3d at 389.

138. *Templemire*, 433 S.W.3d at 389 (citing *Fleshner*, 304 S.W.3d at 93).



*Hansome* and *Crabtree* were not based on judicially created common law doctrine, nor were they interpretations of an infrequently amended state constitution, but rather were interpretations of a Missouri statute, on which the General assembly is presumed to rely.”<sup>139</sup>

As the dissent noted, a distinction between *Fleshner* and the workers’ compensation retaliation case history is that *Fleshner* discussed public policy, a common law principle, while workers’ compensation is a statutory provision.<sup>140</sup> However, it is worth noting that the contributory factor standard used in public policy exceptions, as articulated in *Fleshner*, is also used for the statutory provision of the MHRA in *Daugherty*.<sup>141</sup> As both the MHRA and workers’ compensation retaliation laws are statutory, the question arises as to whether both should follow the same standard. The answer clearly must be no, as it would be ridiculous to argue that all statutes must uphold the same causation standard. Rather, in their analysis, the court in *Fleshner* and the dissent in *Templemire* simply noted that *Fleshner*’s articulation of a contributing factor standard for public policy decisions in no way requires the court to do the same for statutory workers’ compensation laws.<sup>142</sup>

Therefore, what effect *Fleshner* should have on workers’ compensation retaliation cases is easily debatable. The text of *Fleshner* appears to affirm the decisions in *Hansome* and *Crabtree*, as it states: “There is a key distinction between workers’ compensation retaliation cases and public-policy exception cases. While prior cases indicate that ‘exclusive causation’ is the appropriate standard for retaliation, [it] is not the proper standard for wrongful discharge based on the public-policy exception.”<sup>143</sup>

However, it is possible that the *Fleshner* decision may have questioned the application of the exclusive causation standard for workers’ compensation retaliation cases. The majority noted that after *Fleshner*, it seemed nonsensical that the exercise of workers’ compensation rights not be afforded the same level of protection as the activities protected by the MHRA and public policy exception to the employment-at-will doctrine.<sup>144</sup> This principle is reflected in the majority’s statement that discrimination cannot be tolerated for discrimination based upon protected classes, an employee blowing the whistle on an employer’s illegal practices, or for exercising workers’ compensation

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139. *Templemire*, 433 S.W.3d at 389.

140. *Fleshner*, 304 S.W.3d at 93. The *Fleshner* Court stated that “[t]here is a key distinction between workers’ compensation retaliation cases and public-policy exception cases. Workers’ compensation cases arise under statute, while public policy exception cases arise under the common law of torts.”

141. *Daugherty*, 231 S.W.3d at 820; *Fleshner*, 304 S.W.3d at 94–95.

142. *Templemire*, 433 S.W.3d at 389 (citing *Fleshner*, 304 S.W.3d at 93).

143. *Fleshner*, 304 S.W.3d at 93.

144. *Templemire*, 433 S.W.3d at 384.

rights.<sup>145</sup> Therefore, although the words of *Fleshner* could be interpreted to affirm the exclusive causation standard for workers' compensation, it could also be interpreted that the deeper meaning of *Fleshner* in fact does the opposite.<sup>146</sup>

The impact of *Fleshner* on the workers' compensation retaliation cases is argued well by both the majority and the dissent of *Templemire*. It is difficult to critique the majority for reading *Fleshner* in terms of its practical application, rather than the text used. However, the same cannot be said for the interpretation of the language of Missouri Revised Statutes Section 287.780 as well as the majority's disregard of *stare decisis*.

### B. *The Missouri Legislature*

The language of Missouri Revised Statutes Section 287.780 as well as the General Assembly's intentions during the 2005 are both highly contested in the *Templemire* decision. Although it can be said that the majority and dissent are justified in their interpretations of the 2005 amendments of the Missouri legislature, the *Templemire* majority is clearly flawed in their interpretation of Section 287.780.

The intent of the Missouri General Assembly during the 2005 overhaul of workers' compensation law is easily debatable.<sup>147</sup> The majority stressed the fallacy in relying upon legislative inaction, holding that inaction could be interpreted to be approval of a court's reading of a statute, but could just as well mean that the forces in favor of changing the law are matched by the forces against changing it.<sup>148</sup> Therefore, the majority concluded it would be merely speculative to infer the Missouri General Assembly's approval of the exclusive causation standard through their decision not to revise Section 287.780.<sup>149</sup>

The majority has support in former Missouri Supreme Court case law, namely in *Med. Shoppe Int'l Inc. v. Dir. of Revenue*. Here, as the majority stated, the court held that legislative inaction could simply mean that the forces arrayed in favor of changing the law were matched by the forces against changing it.<sup>150</sup> The court stressed that an incorrect judicial interpretation of a statute could stand simply because the legislature paid no attention to it.<sup>151</sup> Although it seems unlikely that the legislature did not pay attention to Section 287.780 during their expansive overhaul of workers' compensation laws, the

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145. *Id.*

146. *Fleshner*, 304 S.W.3d at 93; *Templemire*, 433 S.W.3d at 384.

147. *Templemire*, 433 S.W.3d at 380.

148. *Id.* (citing *Med. Shoppe*, 156 S.W.3d at 334).

149. *Id.*

150. *Med. Shoppe*, 156 S.W.3d at 334.

151. *Id.*

precedent of *Med. Shoppe* makes it clear that the General Assembly's inaction cannot be interpreted to be approval of the court's reading of a statute.<sup>152</sup>

The dissent, unlike the majority, found great significance in the actions of the 2005 General Assembly.<sup>153</sup> What the majority classified as legislative inaction, the dissent interpreted as affirmative steps that demonstrated the legislature's intent to retain the exclusive causation standard.<sup>154</sup> The dissent found it significant that the legislature performed an extreme overhaul on the workers' compensation laws, that repealed different causation standards and cases of Missouri courts by name and citation, but did not repeal the exclusive causation standard articulated in *Hansome* and *Crabtree*.<sup>155</sup> The legislature could have easily enacted a new causation standard for workers' compensation retaliation cases by mention of *Hansome* and *Crabtree*, but did not.<sup>156</sup> Therefore, due to the extreme nature of the General Assembly's overhaul, the dissent viewed the 2005 amendments as a powerful statement, rather than inaction.<sup>157</sup>

The dissent's argument is also supported by Missouri case law. In 1976, the Missouri Supreme Court held: "In construing statutes to ascertain legislative intent, it is presumed the legislature is aware of the interpretation of existing statutes. . ."<sup>158</sup> Therefore, re-enactment of a statute after judicial construction is equivalent to legislative adoption of such construction.<sup>159</sup> Under this interpretation, the 2005 amendments are the legislature's adoption of the exclusive causation standard for workers' compensation retaliation cases, not what the majority classifies as legislative inaction.

In viewing the arguments to the 2005 amendments, both the majority and dissent have arguments rooted in Missouri Supreme Court precedent.<sup>160</sup> It is difficult to say which precedent is better and therefore both have valid arguments to the interpretation of the 2005 amendments of the Missouri General Assembly. However, the majority does not have a similarly valid argument in discussing their interpretation of the language of Section 287.780.

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152. *Id.*

153. *Templemire*, 433 S.W.3d at 389.

154. *Id.* at 390.

155. *Id.* at 389–90.

156. *Id.* at 390.

157. *Id.*

158. *Kilbane v. Dir. of the Dep't of Revenue*, 544 S.W.2d 9, 11 (Mo. 1976) (affirming the rule stated in *Gross v. Merchants-Produce Bank*, 390 S.W.2d 591, 597 (Mo. Ct. App. 1965)).

159. *Dow Chemical Co. v. Dir. of Revenue, State of Mo.*, 834 S.W.2d 742, 745 (Mo. 1992). In *Dow*, the court explains it is not just the text of a statute that indicates legislative intent; judicial decisions also give effect to the statute. The judicial construction of a statute by a court of last resort becomes a part of the statute as if it had been so amended by the legislature.

160. The majority's precedent is found in *Med. Shoppe Int'l Inc. v. Dir. of Revenue*, 156 S.W.3d 333, 334 (Mo. 2005). The dissent has precedent rooted in *Kilbane*, 544 S.W.2d at 11 (Mo. 1976) and *Dow Chemical Co.*, 834 S.W.2d at 745 (Mo. 1992).

Regarding to the language of Section 287.780, the majority stated that a contributory factor standard fulfills the purpose of the statute, which is to prohibit employers from discharging or *in any way* discriminating against an employee for exercising his or her rights under Chapter 287.<sup>161</sup> The majority held that the use of the phrase, “in any way,” is more consistent with a contributory factor standard than an exclusive causation standard.<sup>162</sup> However, the majority does not in any way support this assertion; they simply stated that a contributing factor standard better fulfills the “in any way” language of the statute and criticized the *Hansome* court for plucking the exclusive causation language “out of thin air.”<sup>163</sup>

The dissent disagreed with the majority’s opinion that the court in *Hansome* did not interpret the wording of Missouri Revised Statutes Section 287.780.<sup>164</sup> The dissent made the obvious conclusion that the text of Section 287.780 did not provide *any* specific causation standard, and thus the court had to analyze how to enact Section 287.780.<sup>165</sup> Indeed, *Hansome* quoted Section 287.780 and interpreted the four elements necessary to make a claim under the statute.<sup>166</sup> The dissent stated that there can be no doubt that, in *Hansome*, the court was required to and did in fact construe Section 287.780.<sup>167</sup>

Furthermore, *Hansome* cited *Davis* and *Mitchell* as precedent that aided in the interpretation of Section 287.780. Specifically, the *Davis* court concluded that Missouri Revised Statutes Section 287.780 showed legislative intent that an employee must prove that they were discriminated against or discharged precisely due to the exercise of his or her workers’ compensation rights.<sup>168</sup> The court reasoned that the wording of Section 287.780, which states that employers shall not discharge or discriminate *for* exercising their rights under Chapter 287, does not reflect that a cause of action exists due to the mere fact that an employee was discharged after they exercised their workers’ compensation rights.<sup>169</sup>

In interpreting the text of Section 287.780, the dissent’s argument clearly outweighs the majority’s opinion. The majority stated that a contributory factor standard better fulfills the purpose of the statute due to the language of “in any way” located in Section 287.780.<sup>170</sup> However, the words “contributing factor”

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161. *Templemire*, 433 S.W.3d at 384.

162. *Id.*

163. *Id.* at 379, 384.

164. *Id.* at 389.

165. *Id.* The dissent indicates that the use of the language “in any way” is not indicative of any standard, but is simply part of the language used to prohibit workplace discrimination.

166. *Templemire*, 433 S.W.3d at 389.

167. *Id.*

168. *Davis v. Richmond Special Rd. Dist.*, 649 S.W.2d 252, 255 (Mo. Ct. App. 1983).

169. *Id.*

170. *Templemire*, 433 S.W.3d at 384.

much like the words “exclusive causation” do not appear anywhere in Section 287.780.<sup>171</sup> Therefore, the majority’s reading of Section 287.780 is their interpretation, much like exclusive causation standard, was the interpretation of the previous Missouri Supreme Court Justices. The majority’s interpretation cannot be said to be any better or worse than the decision of previous Missouri courts and thus cannot possibly justify overruling over three decades of precedent.<sup>172</sup>

### C. *The Doctrine of Stare Decisis*

Arguably, what should determine the outcome of *Templemire* is whether *stare decisis* should stand and preserve the exclusive causation standard. The *Templemire* majority noted that the doctrine of *stare decisis* promotes security in the law by encouraging adherence to previously decided cases, but also stated that adherence to precedent is not absolute.<sup>173</sup> Indeed, the Missouri Supreme Court had stated previously in *Med. Shoppe Int’l Inc.* that the adherence to precedent is not absolute, that the passage of time and the expertise of enforcing a purportedly incorrect precedent may demonstrate a compelling case for changing course.<sup>174</sup>

The *Med Shoppe* court noted that the changing needs of society could trump adherence to precedent and demonstrate the fallacy of an earlier interpretation.<sup>175</sup> However, the failure of the *Templemire* majority is that they in no way discussed how needs of society have changed between the decisions in *Crabtree* and *Templemire* that would require such disregard to *stare decisis*.<sup>176</sup> Instead, they bluntly stated that *Hansome’s* decision was unfounded and end the discussion on *stare decisis*.<sup>177</sup>

Although not discussed by the *Templemire* majority, the *Fleshner* court possibly discussed a need of society that could justify the overturning of the doctrine of *stare decisis*.<sup>178</sup> There, the court stated that the exclusive causation standard was difficult on employees because the employer could assert that the employee was also fired for another reason.<sup>179</sup> Although this is a valid concern,

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171. MO. REV. STAT. §287.780 (2014).

172. See discussion *infra* Section VII-C.

173. *Templemire*, 433 S.W.3d at 379.

174. *Med. Shoppe*, 156, S.W.3d at 335.

175. *Id.*

176. *Templemire*, 433 S.W.3d at 379–80.

177. *Id.* at 379. As discussed *infra* Section VII-B, *Hansome’s* decision cannot be said to be unfounded, but rather is a valid interpretation of Section 287.780 that relies on previous case law to support its decision.

178. *Fleshner*, 304 S.W.3d at 93.

179. *Id.* Here, the *Fleshner* court was discussing why “exclusive causation” was not appropriate for public policy exceptions to employment-at-will and was not discussing workers’

it cannot be said to be a new concern faced by the court, but instead is one that the courts in *Mitchell*, *Davis*, *Hansome*, and *Crabtree* had to consider years ago in establishing the exclusive causation standard.

In a footnote, the *Templemire* majority stated that strict adherence to *stare decisis* would result in a society where discrimination would subject children to being segregated into schools that were purportedly separate but equal, where women could not serve on juries, and where interracial marriage would be subject to criminal prosecution.<sup>180</sup> Indeed, it can be said that these notions are manifestly wrong. What is unclear is whether a high causation standard for employees asserting workers' compensation retaliation cases could be said to be equivocally wrong to the aforementioned evils. The majority appears to use injustices that previously plagued society to stir emotions and gain support for their holding without discussing in any way how the exclusive causation standard for workers' compensation is similar to those events. Rather, through little discussion, the court simply stated that *stare decisis* was best not applied to the exclusive causation standard.<sup>181</sup>

Alternatively, the dissent noted that other than the passage of time and the changing membership of the court there were no reasons, no recent changes of society, and no inherent flaws in the exclusive causation standard that would require an abandonment of *stare decisis*.<sup>182</sup> The dissent admonished the majority opinion for giving "short shrift" to the doctrine of *stare decisis*, claiming the majority failed to recognize that adherence to precedent is most important when the precedent in question concerns settled opinions of statutory interpretation.<sup>183</sup>

Specifically, the dissent stressed the Missouri Supreme Court's own decision in *Crabtree*, which explicitly said that [the Missouri Supreme Court] should not lightly disturb its own precedent and that mere disagreement by the current court would not be a satisfactory basis for violating the doctrine of *stare decisis* in the absence of recurring injustice or absurd results.<sup>184</sup> The question then remains as to whether recurring injustice or absurd results were met by the exclusive causation standard. The court in *Crabtree* and the dissent in *Templemire*, among others, did not believe the exclusive causation standard reached the extreme classification of "absurd results."<sup>185</sup>

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compensation retaliation cases. However, it would be an argument that could possibility apply to workers' compensation retaliation cases as well.

180. *Templemire*, 433 S.W.3d at 380.

181. *Id.* at 379.

182. *Templemire*, 433 S.W.3d at 386–87.

183. *Id.* at 386.

184. *Templemire*, 433 S.W.3d at 386 (citing *Crabtree*, 967 S.W.2d at 71–72).

185. *Templemire*, 433 S.W.3d at 386–87 (citing *Crabtree*, 967 S.W.2d at 71–72). It should be noted, the Court in *Crabtree* stated that the "absurd result" would be for the court to *not* uphold the exclusive causation standard. The court wrote: "If there is an injustice or an absurdity, it

Particularly, there are two United States Supreme Court Justices that would arguably agree with the *Crabtree* court and *Templemire* dissent. In *Alleyne v. United States*, United States Supreme Court Justice Sotomayor wrote: “Establishing that a decision was wrong does not, without more, justify overruling it.”<sup>186</sup> Justice Sotomayor reasoned that courts should adhere to prior decisions, *even if their soundness is questionable*, because doing so promotes the evenhanded, predictable, and consistent development of legal principles and fosters reliance on judicial decisions.<sup>187</sup> Therefore, the question in *Templemire*, as it was in *Alleyne*, should be whether any special justification existed to justify departure from the important doctrine of *stare decisis*. The *Templemire* majority classified the exclusive causation standard described in *Crabtree* and *Hansome* as “an aberration. . . plucked out of thin air,” but still did not state any special justification that would require departing from *stare decisis*.<sup>188</sup> Therefore, it seems likely that Justice Sotomayor would agree with the dissent that the doctrine of *stare decisis* should be upheld in *Templemire*.

Secondly, in 1932, United States Supreme Court Justice Brandeis stated: “*Stare decisis* is usually the wise policy because in most matters it is more important that the applicable rule of law be settled than that it be settled right. This is commonly true even when the error is a matter of serious concern, provided correction can be had by legislation.”<sup>189</sup> In his statement, Justice Brandeis indicated that *stare decisis* should be strictly upheld for decisions that concern statutory interpretation, as the legislature has the ability to correct an improper interpretation.<sup>190</sup> Whereas cases involving issues such as the United States Constitution, which cannot easily be corrected through legislative

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would be for this Court to abandon the requirement that the discharge be exclusively caused by the exercise of rights pursuant to the workers’ compensation law. Under that rule, an employee who admittedly was fired for tardiness, absenteeism, or incompetence at work would still be able to maintain a cause of action for discharge if, in addition to the other causes, a cause for discharge was the exercise of rights under the workers’ compensation laws”.

186. *Templemire*, 433 S.W.3d at 387 (citing *Alleyne v. United States*, 133 S. Ct. 2151, 2164 (2013)).

187. *Alleyne v. United States*, 133 S. Ct. 2151, 2164 (2013) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)).

188. *Templemire*, 433 S.W.3d at 379.

189. *Id.* at 387 (quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932)).

190. *Burnet*, 285 U.S. at 405–06 (Brandeis, J., dissenting). Justice Brandeis’ opinion has not gone unrecognized. In 1990, the Supreme Court expressly adopted Brandeis’ statements in *Burnet*, and refused to depart from precedent regarding to the interpretation of a statute in *California v. F.E.R.C.*, 495 U.S. 490, 500 (1990). The Court reaffirmed this interpretation again in 2008, in *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 138, 139 (2008).

action, courts may be more lenient with the doctrine, as there is no other available avenue to correct a previously wrong decision.<sup>191</sup>

Therefore, even if a special justification Justice Sotomayor discusses in *Alleyene* could be asserted by the *Templemire* majority in overruling the exclusive causation standard,<sup>192</sup> there is still a strong argument for upholding the exclusive causation standard for workers' compensation retaliation cases.<sup>193</sup> The exclusive causation standard articulated in *Hansome* and *Crabtree* are statutory interpretations of the language of Missouri Revised Statutes Section 287.780.<sup>194</sup> Therefore, according to Justice Brandeis and the dissent of *Templemire*, *stare decisis* should be given great effect for workers' compensation retaliation cases.<sup>195</sup> Indeed, as Justice Brandeis predicted, the Missouri General Assembly did in fact have the opportunity to change the law and the exclusive causation standard in 2005, but neglected to do so.<sup>196</sup> Thus, the statutory interpretation of the exclusive causation standard for workers' compensation retaliation laws should be upheld.<sup>197</sup>

Of all the arguments present in the *Templemire* decision, the strongest argument for upholding the exclusive causation standard is one that is merely brushed over by the majority.<sup>198</sup> The majority ironically called *Hansome* "an aberration, in which the 'exclusive' language appears to be plucked out of thin air with no support in the case law or statutory interpretation."<sup>199</sup> However, in their disregard for *stare decisis*, it is the majority who seems to be plucking the contributing factor standard out of thin air, as there are no previous workers' compensation retaliation cases nor explicit wording in a Missouri statute to support its implementation.<sup>200</sup> Therefore, it can only be said that the majority disregarded the doctrine of *stare decisis* and disposed of three decades worth

191. *Burnet*, 285 U.S. at 406–07 (Brandeis J., dissenting). Justice Brandeis states: "In cases involving the Federal Constitution, where correction through legislative action is practically impossible, this court has often overruled its earlier decisions. . ."

192. As detailed *infra* Section VI, it appears that no special justification exists. The majority opinion in *Templemire* finds it necessary to overrule the exclusive causation standard, and yet does not give any special justification other than its finding that the exclusive causation standard was arbitrarily selected by the court in *Hansome* and *Crabtree*.

193. *Burnet*, 285 U.S. at 406.

194. See *Hansome v. Northwestern Cooperage Co.*, 679 S.W.2d 273 (Mo. 1984) and *Crabtree v. Bugby*, 967 S.W.2d 66 (Mo. 1998).

195. *Templemire*, 433 S.W.3d at 387. *Burnet*, 285 U.S. at 406 (Brandeis, J., dissenting).

196. *Templemire*, 433 S.W.3d at 389–390; see also STOKES, *supra* note 83 (outlining many of the changes made to workers' compensation laws in the 2005 amendments).

197. *Templemire*, 433 S.W.3d at 387 (Fischer, J., dissenting).

198. A small section of the *Templemire* majority opinion is dedicated to the discussion of *stare decisis*. The court's main reasoning for doing away with *stare decisis* is that the *Hansome* decision's reliance on *Mitchell* and *Davis* was unfounded. *Templemire*, 433 S.W.3d at 379–80.

199. *Templemire*, 433 S.W.3d at 379.

200. See discussion *infra* Section IV of the history of workers' compensation retaliation cases.



of precedent for what appears to be nothing more than mere disapproval of the previous courts' interpretation.<sup>201</sup>

#### VIII. CONCLUSION

The *Templemire* decision created historic changes in Missouri workers' compensation law. The decision significantly improved discharged and injured employees' chances of winning a case against their employer by reducing the standard from exclusive causation to contributing factor. Some welcomed the new contributing factor standard as giving employees a "realistic chance" of recovering damages.<sup>202</sup> Others note the discussion in *Crabtree*, that a lower standard for workers' compensation retaliation would result in an employee, who admittedly was fired for tardiness, absenteeism, or incompetence at work, being able to maintain a cause of action for discharge if, in addition to the above causes, [they exercised a right] under the workers' compensation laws.<sup>203</sup>

Aside from the more practical aspects of the change from exclusive causation standard to contributing factor standard, *Templemire* should cause great concern over the status of *stare decisis* in Missouri. With minimal discussion and unclear reasoning, the Missouri Supreme Court threw away over three decades worth of precedent in three paragraphs of a decision in *Templemire*.<sup>204</sup> The *Templemire* majority, who criticized prior courts as having plucked the exclusive causation test out of thin air, did exactly what they condoned when they disregarded precedent and created the contributing factor standard— a standard that is in no way stated in Section 287.780 of the Missouri Revised Statutes.<sup>205</sup>

*Stare decisis* is a foundation of the law of the United States, which as Supreme Court Justice Sotomayor stated in *Alleyene*, promotes the evenhanded, predictable, and consistent development of legal principles and fosters reliance on judicial decisions.<sup>206</sup> However, if the Missouri Supreme Court can be so hypocritical and inconsistent with decades worth of precedent, then what are the people of Missouri supposed to rely on? If long-standing

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201. *Templemire*, 433 S.W.3d at 379.

202. MATTHEW SIMS, *Missouri Workers' Compensation: Wrongful Termination- Fired After Making a Claim for Benefits*, THE SIMS LAW FIRM, available at <http://www.simslaw.com/missouri-workers-compensation-wrongful-termination-fired-making-claim-benefits/> (last visited Jan. 19, 2015).

203. *Crabtree*, 967 S.W.2d at 72. Again, note this situation occurred in *Mitchell*, as Mitchell was fired for absenteeism that resulted from missed bus connections, bad weather, family illness, oversleeping, and gynecological appointments. However, because she also missed work for reasons related to her back injury, her employer would now be forbidden from firing her.

204. *Templemire*, 433 S.W.3d at 379–80.

205. *Templemire*, 433 S.W.3d at 379–80; MO. REV. STAT. §287.780 (2014).

206. *Alleyene v. United States*, 133 S. Ct. 2151, 2164 (2013).

laws can be disregarded with such little deliberations, Missouri citizens should be very weary to depend on the rulings of courts in their state.

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