FORTY YEARS OF UNSCHEDULED WORKERS’ COMPENSATION AWARDS FOR COMPLEX REGIONAL PAIN SYNDROME AND ITS PREDECESSORS IN IOWA COURTS: WHEN WILL MEDICAL EVIDENCE, LEGISLATIVE INTENT, AND COMMON SENSE FINALLY PREVAIL?

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I. INTRODUCTION

Iowa’s workers’ compensation system was developed as a means to
compensate injured workers for lost earnings. As the system evolved, a schedule was developed to provide compensation for the loss of certain parts of the body. The legislature intended for the workers' compensation system to provide conservative awards to offer relief to injured workers. Today, employers face increasing insurance costs, and the system is strained to adequately compensate injured employees. This Note contends that a portion of the rising cost of workers’ compensation insurance and strain on the system may be attributed to judicial precedent liberally construing the schedule enacted by the Iowa legislature. This Note further asserts that the liberal interpretation of the schedule has led to a more litigious workers’ compensation system and has increased appeals of agency decisions. While the workers’ compensation statutes are interpreted in favor of the injured employee, this Note contends that the bench has started down a slippery slope by exceeding the intent of the legislature.

This Note will address the impact of an unscheduled injury, namely Complex Regional Pain Syndrome (CRPS), on the Iowa workers’ compensation system. CRPS is just one example of the problems currently facing all states’ workers’ compensation systems. In light of increasing

1. See infra note 92 and accompanying text.
2. See discussion infra Part IV.A.
3. See infra note 92 and accompanying text.
5. See infra Part IV.B.
6. Unresolved appeals in the workers’ compensation system come before state courts. “Significant additional costs are borne by the workers’ compensation system in the form of attorneys’ fees, medical witness fees, administrative overhead for the formal hearings and records, and prolonged absences of appellants from work due to disputed claims.” Michael G. Holthouser, Evidentiary Issues in Workers’ Compensation, in SCIENCE ON THE WITNESS STAND 289, 308 (2001).
7. See Zomer v. W. River Farms, Inc., 666 N.W.2d 130, 133 (Iowa 2003) (discussing the court’s struggle in interpreting Iowa’s workers’ compensation law); see also Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 14 (Iowa 1993) (“As a creature of statute, our workers’ compensation law—subject to constitutional limitations—may provide such provisions and limitations as the legislature deems necessary. But, as we noted earlier, this law is for the benefit of the working person and should be, within reason, liberally construed.”).
medical knowledge regarding CRPS, this Note encourages practitioners, courts, and the Iowa legislature to consider whether CRPS, when confined to a scheduled member, should continue to be awarded as an unscheduled injury. This Note presents the argument that CRPS confined to a scheduled member was inappropriately awarded as an industrial disability in 1961, and the irrationality of that decision has been followed for over forty years.8

Many issues are beyond the scope of this Note. While it is apparent to practitioners, employers, and insurance providers that the cost of workers’ compensation coverage is on the rise, this Note cannot begin to address the exact causes of this trend.9 This Note also does not address over-diagnosis or misdiagnosis of CRPS.10 This Note seeks only to address the judicial treatment of valid cases of CRPS, and does not aim to accuse patients of symptom magnification or to downplay the severity of the disease.11

Part II of this Note provides an in-depth discussion of CRPS, a devastating but fascinating disease.12 At first glance, a majority of the medical discussion may be of slight importance to the Note’s contentions; however, the detailed information on CRPS is intended to spark the legal community’s interest in the disease. It is crucial for attorneys on both sides of workers’ compensation litigation to understand the disease in order to effectively represent their clients. As this Note is meant for use by the courts and practitioners, it is light on medical terminology.

Part III of this Note presents a hypothetical workers’ compensation

9. Some believe the increasing costs of medical treatment for workers’ compensation injuries are one reason why insurance costs are on the rise. Holthouser, supra note 6, at 298 (noting that these increases are reflected in rising premium rates of employers). There also may be a tendency among medical practitioners to charge injuries to the workplace, as workers’ compensation will cover one hundred percent of medical bills in addition to wage replacement. Id.
10. See Sally James, Reflex Sympathetic Dystrophy Spells: C-O-N-T-R-O-V-E-R-S-Y, http://www.rsdhope.org/Showpage.asp?PAGE_ID=131&PGCT_ID=3397 (last visited Feb. 18, 2007) (stating that “[p]atients with symptoms of RSD may have other treatable disorders, such as diabetic neuropathy, tumors on nerves, nerve entrapment or spinal cord disease”).
11. See Jack E. Hubbard, Reflex Sympathetic Dystrophy Syndrome, 25 J. INFUSION NURSING 121, 122 (2002) (noting the pain of CRPS is so out of proportion to the inciting injury that patients are often initially diagnosed with malingering or conversion hysteria).
12. See discussion infra Part II.
claim involving CRPS. The scenario forms an ideal set of facts to illustrate the problems facing the state, and presents a prime fact pattern to test in the appellate courts. Further, the fact scenario demonstrates the difference in the amount of compensation awarded when CRPS is found to be a body as a whole injury as compared to a scheduled loss.

Part IV of this Note explains the concepts of scheduled and unscheduled injuries. It sets forth case law, predominately from Iowa, concerning schedule issues and CRPS. In the workers’ compensation context, a “scheduled” injury refers to a certain member of the body for which the legislature has intended a set number of weeks of compensation. For example, an arm is a scheduled member. An “unscheduled” injury is one which falls outside the defined members of the body listed on the schedule. For instance, a neck or shoulder injury is an unscheduled injury. An unscheduled injury is also referred to as a “body as a whole” injury or an “industrial disability.” These concepts will be discussed in detail in Part IV of this Note.

The Note’s conclusion reiterates the logical outcome of the fact scenario, and urges Iowa courts to adhere to the legislature’s schedule. It also challenges legal practitioners to bring medical evidence, legislative intent, and common sense into the courtroom when they are faced with a case similar to the factual scenario.

II. COMPLEX REGIONAL PAIN SYNDROME (CRPS)

“Complex regional pain syndrome (CRPS), previously known as reflex sympathetic dystrophy, is a disorder in which pain and dysfunction are disproportionate in severity or duration to that expected from the initiating event.”

13. See discussion infra Part III.
14. See infra note 77.
15. See discussion infra Part IV.
17. See infra note 94 and accompanying text.
18. See infra note 95.
19. See infra note 97 and accompanying text.
20. See discussion infra Part IV.A.
21. See infra notes 97–99 and accompanying text.
22. See discussion infra Part V.
A. History of the Disease

In 1864, Dr. S. Weir Mitchell was the first person to conduct a modern study of what he termed “causalgia,” experienced by wounded Civil War soldiers who had partial nerve injuries. The term reflex sympathetic dystrophy (RSD) was coined in 1947 because doctors originally thought the disease was a dysfunction of the sympathetic nervous system; since that time, new medical discoveries have prompted the medical community to abandon the term RSD. Today, the neuropathic pain disorders formerly known as RSD and causalgia are diagnosed as CRPS type I and type II, respectively. The name change by the International Association for the Study of Pain occurred in 1994 when experts found that the pain disorders were likely a dysfunction of both the peripheral and central nervous systems. The use of the term CRPS was meant to introduce a standard nomenclature, to eliminate obsolete medical understanding surrounding the disease, and to improve public recognition of the ailment.

B. Symptoms of CRPS

The symptoms of CRPS vary, but all are painful and devastating. "[T]he dysfunction of the sympathetic nervous system may be both peripheral and central in origin which may account for the complex and

(2000).

24. Hubbard, supra note 11, at 121; see also id. at 122 fig.1 (listing other historical names for CRPS, including: reflex-dystrophy, Sudeck reaction, chronic regional pain syndrome, and shoulder-hand syndrome).

25. See id. at 121–22 (noting that healthcare workers later noticed that the involvement of the sympathetic nervous system varied among patients); see also Theodore S. Grabow et al., Complex Regional Pain Syndrome: Diagnostic Controversies, Psychological Dysfunction, and Emerging Concepts, 25 ADVANCES IN PSYCHOSOMATIC MED. 89, 90–91 (2004) (stating that many have doubted the role of the sympathetic nervous system in the disease).

26. Grabow et al., supra note 25, at 89.

27. Id. at 90.

28. Id. at 90.

29. See, e.g., Joanne M. Thomson, RSD . . . Please, Do Not Touch!, http://www.rsdhope.org/Showpage.asp?Page_ID=40&PGCT_ID=2587 (last visited Feb. 20, 2007). An excerpt from Ms. Thomson’s poem reads: “One touch is like fire; a hug like a knife. What’s worse is I’ll have this the rest of my life. Sometimes, in the morning, I’ll silently pray— Lord, let me be pain-free, if just for today.”
widespread symptom[s] observed in patients with CRPS."\textsuperscript{30} The symptoms of the sympathetic nervous system are similar to those experienced during a “fight-or-flight” response to stress.\textsuperscript{31} To illustrate this, in a healthy person, the increased blood flow during a traumatic event subsides soon after as a part of the healing process; however, this sympathetic hyperactivity continues in a person ailing from CRPS.\textsuperscript{32} The affected limb experiences changes in temperature; typically it is warmer in the beginning stages as the sympathetic nervous system reacts to the injury.\textsuperscript{33} The initial change in blood flow is accompanied by sweating, and then a cooling of the limb after the blood flow is diminished.\textsuperscript{34} “[T]he limb appears dusky, mottled, bright red, or white, depending on the degree and type of cutaneous vascular changes that occur.”\textsuperscript{35}

Besides changing in appearance, the physical functioning of the limb may also become impaired due to the pain and motor dysfunction.\textsuperscript{36} Swelling, weakness, spasms, and dystonia plague some CRPS sufferers.\textsuperscript{37} In the later stages of the disease, dystrophic changes including joint thickness, ridged nails, and diminished hair growth may occur.\textsuperscript{38}

\textbf{C. Diagnosing and Treating CRPS}

A specific test to diagnose CRPS has not been developed, but many tests may help to rule it out.\textsuperscript{39} While the symptoms of CRPS are constantly apparent to patients, doctors favor diagnostic testing in order to find objective evidence to reinforce patients’ complaints.\textsuperscript{40} Objective methods of diagnosis validate the symptoms explained earlier, such as temperature

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{30} Grabow et al., \textit{supra} note 25, at 96.
\item \textsuperscript{31} See Elizabeth Weise, \textit{Abdul Puts Syndrome in Spotlight}, USA \textit{TODAY}, May 12, 2005, at 11D.
\item \textsuperscript{32} See id.
\item \textsuperscript{33} Hubbard, \textit{supra} note 11, at 122.
\item \textsuperscript{34} \textit{Id}.
\item \textsuperscript{35} \textit{Id}.
\item \textsuperscript{36} \textit{Id}.
\item \textsuperscript{37} \textit{Id}. (providing an example of dystonia as a prolonged contraction of a limb); see also Robert J. Schwartzman, \textit{New Treatments for Reflex Sympathetic Dystrophy}, 343 NEW \textit{ENG. J. MED.} 654, 655 (2000) (finding dystonia in the hand starts with flexion and contraction of the fingers—commonly referred to as “clawing”—and moves into the arm and wrist).
\item \textsuperscript{38} Hubbard, \textit{supra} note 11, at 122–23.
\item \textsuperscript{39} \textit{Id} at 123; James, \textit{supra} note 10.
\item \textsuperscript{40} See James, \textit{supra} note 10 (stating more objective evidence on pain would help, because doctors have no way to compare patients’ subjective complaints).
\end{itemize}
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and color changes in the affected limb.41

Sympathetic nerve blocks have been at the core of diagnosis for years.42 The blocks are injected into the stellate ganglion (neck) for upper extremity CRPS or the lumbar (back) for lower extremity CRPS.43 After the block, the physician monitors the patient’s pain and skin temperature to determine the block’s success.44 A warming of the extremity coupled with pain relief leads to a positive diagnosis of CRPS.45 Some researchers caution the use of nerve blocks, however, as doctors must rely on the patient’s subjective pain relief as a means of diagnosis, which may be affected by placebo effects and the patient’s expectations.46

CRPS type I, or RSD, is distinguished from CRPS type II in that CRPS type II has an identifiable peripheral nerve lesion that may appear during diagnostic testing.47 A positive response to the first diagnostic nerve block is indicative of CRPS type I, while further tests uncovering nerve damage support a diagnosis of CRPS type II.48 The tests that expose nerve damage include X-rays and triple-phase bone scans.49 X-rays may show the affected limb’s bone loss, but bone loss is uncommon in the beginning stages of the disease.50 A triple-phase bone scan reveals blood flow in the limb by injecting a substance into it; diminished blood flow may be further

41. See Stephen Bruehl et al., *External Validation of IASP Diagnostic Criteria for Complex Regional Pain Syndrome and Proposed Research Diagnostic Criteria*, 81 PAIN 147 app. B at 153 (1999) (providing the following checklist of signs and symptoms of CRPS established by the IASP: “‘burning’ pain, hyperesthesia, temperature asymmetry, color changes, sweating changes, edema, nail changes, hair changes, skin changes, weakness, tremor, dystonia, decreased range of motion, hyperalgesia, allodynia”).

42. See James, *supra* note 10 (noting the blocks are helpful in relieving pain in the affected limb).

43. Hubbard, *supra* note 11, at 123.

44. *Id.*

45. *Id.*


47. Richard H. Rho et al., *Complex Regional Pain Syndrome*, 77 MAYO CLINIC PROC., 174, 174–175 (2002); see also James, *supra* note 10.


50. *Id.*
evidence of CRPS.\textsuperscript{51}

“Early intervention is important for long-term positive outcomes.”\textsuperscript{52} There is no cure for CRPS, so successful treatment programs aim to relieve the patient’s pain using a multidisciplinary approach including medical treatments and psychological support.\textsuperscript{53} Pain medications, sympathetic nerve blocks, physical therapy, and electric nerve stimulation have all been utilized to lessen the intensity of pain suffered by CRPS patients, but most provide only temporary or minimal relief.\textsuperscript{54} Sympathetic nerve blocks are often performed as treatment if the first block is successful in treating pain.\textsuperscript{55} Spinal cord stimulation has also served as a successful option for alleviating severe pain in patients suffering from CRPS.\textsuperscript{56} Additionally, physical therapy is helpful in controlling CRPS pain, but it must come after pain treatment as “painful physical therapy only contributes to the pain dysfunction.”\textsuperscript{57}

\textbf{D. Controversies and Recent Medical Findings}

“Historically, there has been considerable controversy regarding this disease entity.”\textsuperscript{58} Pain itself is controversial; it is difficult to base medical theories around the subjective complaints of patients diagnosed with CRPS.\textsuperscript{59} While medical authorities tend to disagree about the diagnosis of pain disorders, they all believe that more objective evidence on pain would help evaluate patients’ complaints more effectively.\textsuperscript{60}

\begin{itemize}
\item \textsuperscript{51} Id. (stating that doctors are split on whether this test is helpful or misleading).
\item \textsuperscript{52} Hubbard, supra note 11, at 124.
\item \textsuperscript{53} See id. (finding a multidisciplinary approach is ideal for managing the patient’s physical and psychological struggles with pain).
\item \textsuperscript{54} Marius A. Kemler et al., \textit{Spinal Cord Stimulation in Patients with Chronic Reflex Sympathetic Dystrophy}, 343 NEW ENG. J. MED. 618, 618 (2000).
\item \textsuperscript{55} See Hubbard, supra note 11, at 124.
\item \textsuperscript{56} See Kemler et al., supra note 54, at 623 (detailing that in a study performed on patients unresponsive to traditional pain treatments, researchers found that spinal cord stimulation alleviated pain—although function was not improved).
\item \textsuperscript{57} Cooney, supra note 48, at 734.
\item \textsuperscript{58} Grabow et al., supra note 25, at 89.
\item \textsuperscript{59} See James, supra note 10 (“Even as the academics may argue about the syndrome, patients need treatment.”).
\item \textsuperscript{60} See id. (discussing the need for doctors to treat patients with the options they have, even without strong medical theories about the proper treatments of CRPS).
\end{itemize}
1. *The Frequency of the Disease’s Spread Is Debatable*

To legal practitioners, the most important evidence of a claimant’s disease may be medical opinions regarding the spread of CRPS. Attorneys for the claimant will seek expert testimony that the CRPS will spread in order to receive industrial disability benefits, while attorneys for the employer’s insurance carrier will seek the opposite. If medical evidence supports a finding that CRPS spread is highly rare, then the notion that it will stay confined to a scheduled member is much easier for the courts to accept. On the other hand, if researchers find that CRPS commonly spreads outside the original site of injury, then courts are more likely to determine that a claimant has suffered (or will soon suffer) a body as a whole injury. As with many topics surrounding CRPS, the frequency of the spread of the disease is controversial.61

In a large Dutch study examining 1183 patients who had RSD for over ten years, researchers found that RSD may recur in the same or in another limb, although only in a minority of patients.62 Upon finding 136 recurrences in the 1183 patients, the study concluded that the chance of a patient with RSD developing a recurrence of the disease is 1.8% per year.63 In light of this study, the incidence of spread is low enough to justify automatically compensating CRPS as a body as a whole injury.

In a small German study examining twenty-four patients with CRPS type I, eight patients’ sensory impairment was limited to the limb affected by CRPS.64 The results of this study showed that “[s]ensory impairments frequently extend beyond the affected area and may involve quadratic or hemilateral regions of the body.”65 This study contradicts the previous study regarding the spread of CRPS, but it is much smaller; thus the discrepancies between the conclusions illustrate the extent to which CRPS spread remains controversial.

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61. See, e.g., Peter H.J.M. Veldman & R. Jan A. Goris, *Multiple Reflex Sympathetic Dystrophy. Which Patients Are at Risk for Developing a Recurrence of Reflex Sympathetic Dystrophy in the Same or Another Limb*, 64 PAIN 463, 464 (1996) (finding that in 1065 of the 1183 patients studied, RSD remained confined to one limb). But see Oliver Rommel et al., *Hemisensory Impairment in Patients with Complex Regional Pain Syndrome*, 80 PAIN 95, 98 (1999) (stating that in only 33% of the subjects was RSD confined to one limb).

62. See Veldman & Goris, supra note 61, at 464.

63. *Id.* at 465–66 (noting almost half of the recurrences occurred in a symmetrical limb, which the study referred to as bilateral RSD, and that recurrences are especially common in younger patients).

64. Rommel et al., supra note 61, at 95–98.

65. See Grabow et al., supra note 25, at 98.
The existence of medical controversy and uncertainty is highly relevant to judicial precedent. Both of these studies were performed decades after CRPS was determined to be a body as a whole injury in Iowa.66 When dealing in the realm of medicine and disease, the legal system should not be content to rely on old terminology, historical medical evidence, or stagnant judicial precedent. Further, practitioners should note the importance of these controversies and urge expert witnesses to testify in these disputes. Science is constantly evolving, and judicial decisions regarding unsound medical theories should follow suit and remain receptive to new findings.

2. **CRPS Accompanied by Depression Is Questionable**

The existence of depression with CRPS is significant to practitioners because depression is an unscheduled injury.67 When paired with CRPS, depression causes the injury to be automatically classified as body as a whole, even if the court finds that the CRPS is confined to a scheduled member.68 The occurrence and role of depression and other psychiatric disorders in CRPS patients is questionable, and a diagnosis of CRPS does not always lead to the existence of depression.69

Psychological problems have a reciprocal relationship with chronic pain; “yesterday’s depressed mood contributed to today’s increased pain and . . . yesterday’s pain also contributed to today’s depression, anxiety, and anger.”70 Patients with CRPS often exhibit emotional stress and psychological problems, which early on led doctors and researchers to believe that the pain and symptoms were a result of a mental disorder.71 While the disease is recognized as physiological, present day CRPS sufferers still face skepticism concerning their symptoms because the pain they feel from even the slightest injury is exponentially greater when

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66. See Barton v. Nev. Poultry Co., 110 N.W.2d 660, 664 (Iowa 1961) (holding CRPS is a body as a whole injury); see also discussion infra Part IV.B.1.
68. See id. at 628–29 (holding the claimant’s diagnosis of depression and RSD entitled her to be compensated for an industrial disability).
69. See Grabow et al., supra note 25, at 93 (finding the existence of psychiatric disorders in patients with CRPS spans from 18% to 64%). But see Donald S. Ciccone, Erin B. Bandilla & Wen-hsien Wu, Psychological Dysfunction in Patients with Reflex Sympathetic Dystrophy, 71 PAIN 323, 331 (1997) (concluding that patients with RSD were not psychologically unique from other patients with chronic pain).
70. Id. at 91.
compared to what a nonsufferer would experience. Disbelief from doctors, friends, and family often spurs low self-esteem, stress, and depression in many patients.

III. FACT SCENARIO

The claimant suffered a work related injury—carpal tunnel syndrome. She underwent a carpal tunnel release surgery. Following surgery, the claimant began to experience burning pain and swelling in her hand that radiated up to her elbow. Her treating physician suspected she may have been experiencing the beginning symptoms of CRPS. As time passed, the symptoms worsened to include a notable change in her arm’s temperature and skin color, abnormal hair and nail growth, and atrophy.

The claimant’s doctor noted objective evidence of CRPS by performing nerve tests and a triple-phase bone scan. Through these tests, the doctor found identifiable nerve damage and diagnosed the claimant with CRPS type II. In addition to these objective findings of CRPS, the claimant’s subjective complaints supported a diagnosis of the excruciatingly painful disease. She wore a glove throughout the day, as even the slightest breeze caused intense pain. She was unable to return to work because she could not perform her duties as an administrative assistant.

The presence of CRPS was supported by the treating physician as well as an independent medical examiner. The independent medical examiner gave the claimant a 48% impairment to the right upper extremity. Both doctors agreed that the CRPS was not likely to spread; rather, it would likely remain confined in the right upper extremity and was not expected to extend to the shoulder. After her physician found that she

72. See Ciccone et al., supra note 69, at 323 (“The inciting event is usually a minor injury, often involving an extremity, that persists beyond the bounds of normal healing.”); see also Saturday Night Live: Weekend Update with Tina Fey and Amy Poehler (transcript of NBC television broadcast May 14, 2005), available at http://snltranscripts.jt.org/04/04supdate.phtml. This comedy skit illustrates the public skepticism surrounding CRPS: “Paula Abdul revealed this week that for the last 25 years, she’s been suffering from the obscure disease Complex Regional Pain Syndrome, though many know it by its more common name, the crazies.” Id.

73. Hubbard, supra note 11, at 124.

74. See WEBSTER’S UNABRIDGED DICTIONARY 132 (Random House 2d ed. 2001) (defining atrophy as “a wasting away of the body or of an organ or part”).

75. “Impairment is a medical term and is defined by the American Medical Association (AMA) as ‘the loss of, loss of use of, or derangement of any body part, function, or system.’ Physicians generally determine degree of impairment using an AMA-designed system.” Holthouser, supra note 6, at 292 (emphasis omitted).
had reached maximum medical improvement (MMI),\(^{76}\) the claimant filed her claim for permanent partial disability benefits. At the workers’ compensation hearing, the Commissioner determined that the injury was confined to a scheduled member, the claimant’s arm, and that she suffered no aggravating unscheduled injuries such as depression.

Logically, it would follow that the claimant’s injury and the resultant CRPS would be compensated in accordance with the 48% impairment to her arm, a scheduled member which provides for a fraction of 250 weeks of benefits. Due to Iowa precedent, however, the Commissioner concluded that the claimant was entitled to compensation for a body as a whole injury, or a fraction of 500 weeks of benefits.\(^{77}\) The difference in the scheduled award versus the unscheduled award is $8,931.50.\(^{78}\)

The facts of this scenario are similar to cases which have come before the Workers’ Compensation Commissioner of Iowa.\(^{79}\) In cases where the CRPS was not confined to a scheduled member or was paired with an unscheduled injury, it was proper for the courts to award industrial disability benefits. However, this Note contends that other decisions, in which the injury was confined to a scheduled member, were incorrectly awarded as unscheduled, and that future cases should be decided

\(^{76}\) Maximum medical improvement denotes the point in time when no further improvement in the worker’s condition is expected; in many cases, this does not mean that the injured worker has fully recovered from the injury. \textit{Id.} at 295.

\(^{77}\) To calculate weekly benefits, assume the claimant is single with one exemption and has gross weekly earnings of $575.00. This would lead to $357.26 in weekly benefits according to the 2006 Iowa benefit schedule. Iowa Workforce Dev., Iowa Workers’ Compensation Manual, Benefit Schedule 26 (2006), http://www.iowaworkforce.org/wc/06ratebookallpages.pdf. If her injury was compensated for as a scheduled injury, she would get 120 weeks of benefits totaling $42,871.20 (120 x $357.26). In contrast, if her impairment rating is converted to body as a whole, it would convert to a 29% impairment. American Medical Association, Guides to the Evaluation of Permanent Impairment 439 tbl. 16-3 (Linda Cocchiarella & Gunnar B.J. Andersson eds., American Medical Association 5th ed. 2001) [hereinafter AMA GUIDES]. The 29% impairment would lead to a portion of 500 weeks, or 145 weeks of benefits totaling $51,802.70 (145 x $357.26). For simplicity, interest was not factored into these calculations.

\(^{78}\) $51,802.70 – $42,871.20 = $8,931.50.

\(^{79}\) See, e.g., Solis v. IBP, Inc., No. 1135322, 1999 WL 33619849 (Iowa Indus. Comm’r June 29, 1999) (awarding body as a whole benefits to a claimant whose pain from CRPS was manageable with sympathetic nerve blocks); Wentworth v. Rockwell Int’l, No. 1068926, 1999 WL 33619327 (Iowa Indus. Comm’r July 14, 1999) (awarding body as a whole benefits despite evidence that CRPS was not going to spread and symptoms had improved).
differently.\footnote{80}{See, e.g.,\ Wentworth, 1999 WL 33619327 (awarding body as a whole benefits despite evidence that CRPS was not going to spread and symptoms had improved).

81. 4 ARTHUR LARSON & LEX K. LARSON, LARSON’S WORKERS’ COMPENSATION LAW § 80.05[3], at 80-20 (2006).}

\section*{IV. SCHEDULED VERSUS UNSCHEDULED INJURIES}

When workers’ compensation statutes were originally drafted in the United States, they were based entirely on wage loss; there were no schedules to discern between temporary and permanent incapacity.\footnote{82}{Id. § 80.05[4], at 80-23.}

Researchers posit that the first schedules were found in mid to late nineteenth century individual insurance policies.\footnote{83}{Id.}

The earliest schedules were developed with two underlying justifications: (1) the seriousness of the injury supported the presumption that wage loss would occur sooner or later, and (2) the conspicuousness of the loss ensured that compensation could be made without controversy.\footnote{84}{Id. § 80.05[5], at 80-27.}

Most of the early schedules were very narrow, often limited to the complete loss of use or even “loss by severance” of major members.\footnote{85}{Id. § 80.05[5], at 80-26 to 80-27.}

While only a few states awarded compensation for losses of smaller members such as fingers at the time of the statute’s inception, most state statutes eventually expanded to cover these losses.\footnote{86}{Id. § 80.05[5], at 80-27.}

\footnote{87}{Id.}

\footnote{88}{Id.

\footnote{89}{Id. § 87.02, at 87-3.}

\footnote{90}{See, e.g., NASI Press Release, supra note 4.}
litigation. While the workers’ compensation system is meant to be construed for the benefit of the worker, certainty and predictability are significant interests that legislatures considered when they enacted schedules.

A. Iowa’s Schedule

In Iowa, permanent partial disabilities are categorized as either scheduled or unscheduled losses. Iowa’s established schedule determines the compensation at a percentage of a claimant’s average weekly earnings depending on the site of the injury.

Iowa Code Section 85.34 presents specific values of compensation that injured workers may receive for losses to parts of the body enumerated in the schedule. Scheduled benefits are awarded weekly, and

91. See, e.g., Holthouser, supra note 6, at 308 (recognizing the high litigation costs that burden the workers’ compensation system).
92. See IA S.J., 2002 1st Ex. Sess., at 1228–29, May 9, 2002 (line item veto letter from Governor Vilsack recognizing that the workers’ compensation laws were originally enacted by the Iowa legislature “to create a consistent and fair compensation schedule for workers . . . and to guarant[y] prompt, yet limited, compensation for employee work-related injuries”) (emphasis added). The Iowa Workers’ Compensation Act was enacted in 1913. 1913 Iowa Acts 154.
95. See Mark A. Bosscher, Selected Issues in Workers’ Compensation Law, in ADVANCED WORKERS’ COMPENSATION IN IOWA 1, 2–3 (2004) A summary of Iowa’s schedule is set forth as follows:

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<table>
<thead>
<tr>
<th>Loss</th>
<th>Value</th>
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<tbody>
<tr>
<td>Loss of thumb</td>
<td>60</td>
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<tr>
<td>Loss of first finger</td>
<td>35</td>
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<tr>
<td>Loss of second finger</td>
<td>30</td>
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<td>Loss of third finger</td>
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<td>250</td>
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<tr>
<td>Loss of great toe</td>
<td>40</td>
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</table>
the awards range from 20 weeks of benefits for the loss of a little finger, to 250 for the loss of an arm.\textsuperscript{96}

An injury which is not expressly covered by the schedule found in Iowa Code Section 85.34 is called a body as a whole or unscheduled injury.\textsuperscript{97} Compensation for injuries to the body as a whole is based on a 500 week schedule, and focuses on the loss of earning capacity\textsuperscript{98} caused by the injury.\textsuperscript{99} In determining industrial disability, functional impairment is just one factor.\textsuperscript{100} “Other factors include the employee’s age, education, qualifications, experience, and the inability of the employee to engage in employment for which the employee is fitted.”\textsuperscript{101} Consideration of these factors normally leads to an increased award, much more than the award

<table>
<thead>
<tr>
<th>Injury Description</th>
<th>Weeks</th>
</tr>
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<tbody>
<tr>
<td>Loss of any other toe</td>
<td>15</td>
</tr>
<tr>
<td>Loss of foot</td>
<td>150</td>
</tr>
<tr>
<td>Loss of leg</td>
<td>220</td>
</tr>
<tr>
<td>Loss of eye</td>
<td>140</td>
</tr>
<tr>
<td>Loss of eye (if other previously lost)</td>
<td>200</td>
</tr>
<tr>
<td>Loss of hearing in one ear</td>
<td>50</td>
</tr>
<tr>
<td>Loss of hearing in both ears</td>
<td>175</td>
</tr>
<tr>
<td>Permanent disfigurement, face or head</td>
<td>150</td>
</tr>
<tr>
<td>Loss of both arms, both hands, both feet, both legs,</td>
<td></td>
</tr>
</tbody>
</table>

both eyes, or any two thereof in the same accident ..... 500.

\textit{Id.} Note the last entry provides for two scheduled member injuries arising from the same incident, which is awarded as a body as a whole injury compensated for 500 weeks. \textit{See id.} at 5 (providing an example of a bilateral scheduled member injury pursuant to Iowa Code Section 85.34(2)(s)).

\textsuperscript{96} Honeywell v. Allen Drilling Co., 506 N.W.2d 434, 436 (Iowa 1993).
\textsuperscript{97} Bosscher, \textit{supra} note 95, at 5.
\textsuperscript{98} \textit{Id.} (explaining that loss of earning capacity is also referred to as “industrial disability”).
\textsuperscript{99} \textit{Id.}
\textsuperscript{100} Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 14 (Iowa 1993).
\textsuperscript{101} \textit{Id.} at 14–15.
for a scheduled member.  

With scheduled members, an employer and insurance company can determine the worst case scenario by consulting the schedule. Conversely, body as a whole injuries are less predictable and can range from five weeks to a lifetime of weekly compensation. The uncertainty surrounding benefit amounts for body as a whole injuries provides an incentive for these cases to be settled. Perhaps the incentive to settle unscheduled injuries is the reason that a CRPS case has not recently been brought to Iowa’s appellate courts. The question of whether a diagnosis of CRPS, when expert testimony confirms that it is confined to a scheduled member, is truly an unscheduled injury should plague the minds of logical workers’ compensation attorneys. With the right set of facts, practitioners may find that the monetary risk of an unscheduled award is worth taking in order to have the opportunity to present current medical research and stress the importance of the schedule to the court.

B. Iowa Cases Regarding Scheduled Versus Unscheduled Members

Before Barton v. Nevada Poultry Co., the Iowa Supreme Court declined to use judicial legislation to compensate beyond the schedule to an injured worker. This Note argues that the following position was correct:

The right of a workman to receive compensation for injuries sustained by him growing out of and in the course of his employment is purely statutory. The statute conferring such right upon the workman can also fix the amount of compensation to be paid for different specific injuries, and the employee is not entitled to compensation except as provided by the statute. That a workman sustaining one of the minor injuries for which specific compensation is provided under the statute might, because of such injury, be unable to resume his employment and, because of his lack of education or experience or physical strength...

102. See Prewitt v. Firestone Tire & Rubber Co., 564 N.W.2d 852, 854 (Iowa Ct. App. 1997) (“Thus, the amount of compensation for an unscheduled injury is often much greater than for a scheduled injury.”); see also supra notes 77–78.
103. Bosscher, supra note 95, at 6.
104. See id. (“Without question, estimating an employee’s industrial disability is more of an art than a science.”).
105. See id. (noting even confident employers realize they could be subject to a greater award for body as a whole, and experience in workers’ compensation often only provides a ballpark estimate).
or ability, might be unable to obtain other employment, does not entitle him to be classed as totally and permanently disabled. It may be conceded that the Legislature, if it saw fit to do so, might make such a provision. As the law stands, however, no such provision has been made by the Legislature, and it is not the province of the court to enact such a provision by what is sometimes referred to as judicial legislation.107

1. Iowa CRPS Cases

Alice Barton, an injured employee, filed for workers' compensation benefits following an injury to her right foot.108 On her appeal, the issue was “whether compensation must be limited to that fixed specifically for the loss of a foot, or whether it should be determined by the extent of the disability actually sustained, which the Commissioner found to be total.”109 Following her injury, Barton developed CRPS, which at that time was referred to as causalgia or Sudeck's atrophy.110 The Commissioner distinguished between an injury and a disability, finding that the claimant had an injury limited to her foot, but a disability that went beyond the scheduled loss of a foot due to the CRPS.111 The Iowa Supreme Court held that the Commissioner had erroneously interpreted the law and that the claimant was entitled to industrial disability benefits.112

In the Barton dissent, Justice Larson interpreted the Iowa Code in a way that captured the true intent of the legislature when injuries are confined to a scheduled member. In emphasizing one of the purposes of the schedule—to provide certainty—Justice Larson wrote:

[T]he legislature clearly provided a limit to the recovery for the total loss or impairment of certain scheduled areas in Section 85.35 . . . and, while we have not passed directly on the issue, we have clearly indicated our position as to the limit of recovery when the employee

108. Barton, 110 N.W.2d at 661.
109. See id. at 661–62 (quoting Soukup, 268 N.W. at 600 (deferring to the workers' compensation statute where the injury was confined to a scheduled member (the claimant's foot), regardless of the fact that the claimant was disabled as a result of the injury and unable to work)).
110. Id. at 661.
111. See id. (noting the Commissioner's conclusion that “compensation must be limited to the schedule . . . despite the fact she is totally disabled because of the injury” (emphasis omitted)).
112. Id. at 664.
does not prove physical impairment extending beyond that area.113

The dissent continued, “when there is an injury to and the resultant loss or impairment of a scheduled member or area for which compensation is specifically fixed by the statute, . . . the amount of compensation so fixed governs unless, as a result of the injury, it is shown that other bodily functions are also damaged.”114 Because the Commissioner had found Barton’s injury “was confined solely to the scheduled area,” Justice Larson argued that the Commissioner’s factual determination was binding on the court.115 Justice Larson’s logic captures the importance that this Note places on a common sense interpretation of the schedule.

Barton is strikingly similar to the fact scenario presented earlier.116 Therefore, if this Note’s factual scenario was decided according to Larson’s dissent in Barton,117 the Commissioner’s initial conclusion of a confined injury to a scheduled member would be upheld.118 Unfortunately, the Barton majority served as precedent for Collins v. Department of Human Services, another appellate case which this Note argues incorrectly awarded compensation for CRPS limited to a scheduled member as a body as a whole injury.119

Collins’s injury was identical to the claimant’s injury presented in the earlier hypothetical.120 “The commissioner found that although Collins may have had pain in her shoulder, this did not mean the injury extended into her shoulder.”121 Citing Barton, Collins held that the claimant was

113. Id. at 664–65 (Larson, J., dissenting).
114. Id. at 665.
115. Id. at 664.
116. See discussion supra Part III.
117. Barton, 110 N.W.2d at 664–65 (Larson, J., dissenting).
118. See discussion supra Part III.
119. Compare Barton, 110 N.W.2d at 664 (holding CRPS made the claimant’s injury extend beyond a scheduled loss), with Collins v. Dep’t of Human Servs., 529 N.W.2d 627, 629 (Iowa Ct. App. 1995) (holding the claimant was entitled to industrial disability benefits under Barton because CRPS was a dysfunction of the entire nervous system).
120. Other claimants suffered from carpal tunnel syndrome, had carpal tunnel release surgery, and subsequently developed CRPS. However, Collins also suffered from depression resulting from her injury. Compare discussion infra Part III, with Collins, 529 N.W.2d at 628. Note that the Collins facts do not mention whether Collins suffered from CRPS type I or type II; the court refers to her disease as reflex sympathetic dystrophy. See id.
121. Id. (indicating that the agency determined her injury did not qualify as a body as a whole injury because there was substantial evidence to show that the
entitled to compensation for industrial disability based on her diagnosis of RSD. In reversing the Commissioner’s decision, the Iowa Court of Appeals stated, “[s]he suffered an injury to a scheduled member, her hands, and also to a part of the body not included in the schedule, her nervous system.” It is questionable as to whether CRPS is a disease of the entire nervous system, and even if it is, this Note presents the logical conclusion that when the disease is confined, the award should adhere to the schedule.

This Note focuses on the CRPS issue presented in Collins, but Collins would have nevertheless been entitled to unscheduled benefits due to an aggravating diagnosis of depression. Depression as an unscheduled injury is outside the scope of this Note’s factual scenario.

condition (RSD) did not progress past her hands).

122. See id. at 629 (“As a result of the injury the employee’s entire nervous system became affected by causalgia.”); see also Barton, 110 N.W.2d at 661.

123. Collins, 529 N.W.2d at 629. The Iowa Court of Appeals cited to a sole piece of medical authority which stated RSD was a dysfunction of the sympathetic nervous system. Id. (citing 3 ROBERT K. AUSMAN & DEAN E. SNYDER, MEDICAL LIBRARY § 4-278(a) (Lawyer’s ed. 1989)). As stated in the earlier discussion regarding the courts’ failure to keep medically-oriented cases current with medical research, six-year-old authority on RSD was not a proper basis for a contention that RSD was a disease of the “entire nervous system.” See id.; see also discussion supra Part II.D.1.

The belief that RSD was a disease solely of the sympathetic nervous system was laid to rest in the early 1990s when the name was changed to CRPS. Grabow et al., supra note 25, at 90 (doubting the role of the sympathetic nervous system); see also Hubbard, supra note 11, at 121–22 (noting that healthcare workers later noticed that the involvement of the sympathetic nervous system varied among patients).

The court should have researched CRPS rather than relying on Barton’s holding and a “medicine for lawyers” encyclopedia that contained outdated information on CRPS due to its 1989 publication date. The Collins decision allowed Barton, a case from the 1960s, to influence medical evidence-sensitive cases up to the turn of the new millennium. Perhaps the court’s mistake was in part due to an attorney’s failure to present up-to-date research to the court. Hopefully, this Note will prompt lawyers to provide courts with current research that supports their client.

124. See discussion supra Part II.D.

125. See Smith v. Woodward State Hosp. Sch., No. 02-0929, 2003 WL 1970315, at *2 (Iowa Ct. App. Apr. 30, 2003) (holding that diseased veins, when confined to a scheduled member, was not a disease of the entire vascular system).

126. See Collins, 529 N.W.2d at 629 (stating “a psychological condition caused or aggravated by a scheduled injury is compensable as an unscheduled injury”).

127. See discussion supra Part II.D.2.
2. Iowa Cases That Provide Guidance for CRPS Cases

Smith v. Woodward State Hospital School\textsuperscript{128} is a prime example of the courts’ inconsistency in interpreting the schedule, which corrupts the schedule’s purpose of promoting consistent, uniform judgments.\textsuperscript{129} In Smith, the claimant had diseased veins that caused pain, swelling, and tenderness in her lower leg.\textsuperscript{130} Affirming an intra-agency appeal, the Iowa Court of Appeals held that because substantial evidence showed the diseased veins were confined to the claimant’s lower leg, compensation should be awarded for the loss of a scheduled member.\textsuperscript{131} The court also noted that the agency reasonably found that pain radiating throughout the leg was not a separate disability.\textsuperscript{132} The court contrasted the localization of the diseased veins with the holding in Collins, but did not explain the differences between the cases.\textsuperscript{133}

This Note argues the holding in Smith is questionable; was it proper to differentiate this situation from Collins? Collins’s injury was also confined, but the presence of CRPS—the alleged injury to her “entire nervous system”—mandated an award for industrial disability.\textsuperscript{134} If the court found CRPS to be a disease of the entire nervous system, it would reasonably follow that the same court would conclude that the disease in Smith’s leg veins was a disease of the entire vascular system. Perhaps the court simply refused to extend the holding in Collins any further; the Smith case may be an indication of the court’s reluctance to continue judicial expansion of Iowa’s schedule.

Iowa courts have been relatively consistent in distinguishing between scheduled injuries and their accompanying pain. In Hernandez v. Wells Dairy, Inc., an employee complained of pain in his shoulder, elbow, and wrist.\textsuperscript{135} The claimant was diagnosed with inflammation of his elbow and

\begin{itemize}
  \item \textsuperscript{129} Zomer v. W. River Farms, Inc., 666 N.W.2d 130, 133 (Iowa 2003) (quoting Flint v. City of Eldon, 183 N.W. 344, 345 (Iowa 1921) (discussing the purpose of the statutory remedy and stating that “[i]t was the purpose of the legislature to create a tribunal to do rough justice—speedy, summary, informal, untechnical”)).
  \item \textsuperscript{130} Id. at *1.
  \item \textsuperscript{131} Id. at *2.
  \item \textsuperscript{132} Id. at *1.
  \item \textsuperscript{133} Id. at *2 (contrasting Smith’s case with the finding in Collins that the claimant suffered an injury to her “entire nervous system”).
  \item \textsuperscript{134} Collins v. Dep’t of Human Servs., 529 N.W.2d 627, 629 (Iowa Ct. App. 1995).
  \item \textsuperscript{135} Hernandez v. Wells Dairy, Inc., No. 05-0175, 2005 WL 2217301, at *1
\end{itemize}
carpal tunnel syndrome, but tests did not reveal any objective evidence of
ingury to his shoulder.136 The court noted the difference between injury and
pain in the workers’ compensation context by stating: “Although
Hernandez complained of pain in his shoulder, the evidence does not show
any actual injury to his shoulder.”137 Hernandez’s injury was awarded as a
scheduled injury to his arm.138

The holding in Hernandez mirrors the Commissioner’s finding in
Collins that the claimant’s injury did not extend to her shoulder regardless
of the presence of pain in her shoulder.139 In the recent Mycogen Seeds v.
Sands opinion, the Iowa Supreme Court affirmed the deference an
appellate court must give to the agency as a fact-finder; it held that the
Commissioner has discretion regarding statutory interpretation, factual
findings, and the award of benefits, and that his or her decision is binding if
supported by substantial evidence.140

Hernandez may be applicable to the Note’s fact scenario. Even if
pain radiated to the claimant’s shoulder, the Hernandez holding would
require her physicians to find some objective evidence, such as the results
of a triple-phase bone scan, to support the claimant’s complaints in order to
award compensation for an unscheduled injury. The medical community
often refers to CRPS as a condition, or as encompassing disorders, not an
injury.141 This indicates courts should determine that pain from CRPS,
absent objective evidence of an injury to an unscheduled member, remains
a scheduled disability.142


136. Id.

137. Id. at *2.

138. Id.

139. Collins, 529 N.W.2d at 628 (citing the lower decision which held her injury
did not qualify as a body as a whole injury because there was substantial evidence to
show that the condition (RSD) did not progress past her hands).

appellate court may reverse or modify an agency decision if an erroneous
interpretation of the law was the basis of the decision).

141. See, e.g., AMA GUIDES, supra note 77, at 496 (CRPS, as evidenced by its
title, encompasses syndromes, and the syndromes are also referred to as conditions).

142. See id. The AMA Guides recognize that “a subjective complaint of pain is
the hallmark of these conditions.” Id. The AMA Guides provide criteria for
diagnosing CRPS, and caution that “[a]t least eight of the[] findings must be present
concurrently for a diagnosis of CRPS.” Id. The AMA Guides also point out that this
objective evidence is ascertained by an examiner and is distinct from symptoms, which
are merely “subjective sensations of the individual.” Id. Thus, objective evidence is
not only ascertainable, but it is encouraged.
3. **CRPS Cases Outside of Iowa**

Tennessee’s judiciary has provided helpful guidance in support of this Note’s contentions. In 2005, the Tennessee Supreme Court considered a case analogous to this Note’s fact scenario. The court decided that where CRPS is confined to a scheduled member, the benefits are limited to what the schedule permitted for permanent impairment for that member. Despite the *AMA Guide*’s requirement that the impairment rating be converted to body as a whole, the court found that the statutory scheme (schedule) is controlling when an injury is to a scheduled member only. In limiting the claimant’s benefits to the loss of a scheduled member, the court held:

> In accord with this statutory scheme, we hold that where [CRPS] affects a scheduled member alone, an award of permanent disability benefits is limited exclusively to what the schedule for that member provides. For [CRPS] to be properly apportioned to the body as a whole, the claimant’s injury must affect a portion of the body not statutorily scheduled, affect a particular combination of members not statutorily provided for, or cause a permanent injury to an unscheduled portion of the body.

Tennessee’s holding has already impacted the state’s legal practitioners, as evidenced by its inclusion in the *Tennessee Practice Series*:

> Where the employee has suffered a well-defined loss of a scheduled member or members without other complications, the award is limited to the amount fixed by the schedule and cannot be based on a portion of the body as a whole or permanent total disability of the body as a whole.

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144. *Dotson*, 160 S.W.3d at 501.

145. *Id.* ("[T]he *AMA Guides* are nothing more than tools for effectuating in a *fair* and *predictable* way the paramount goals and requirements of the workers’ compensation statutory scheme.” (emphasis added)). The words “fair” and “predictable” are emphasized in support of the discussion regarding the purposes of a schedule in Part IV of the Note. See discussion *infra* Part IV.

146. *Dotson*, 160 S.W.3d at 501 (reversing the trial court’s holding that Dotson’s benefits must be awarded as body as a whole due to the *AMA Guides*’ conversion requirements, and noting that Dotson had not satisfied the requirements of a body as a whole award).

The _Dotson_ holding is similar to the _Barton_ dissent, in that the court gives deference to the legislature’s enactment of a schedule. Following _Dotson_, in _Stallings v. Taco Bell Corp._, a claimant injured her right arm when she fell at work. She experienced many symptoms of CRPS, including discoloration, change in temperature, no grip strength, and a tremor in her right arm. A doctor who was experienced in diagnosing CRPS concluded that she had a severe case of the disease and only pain medication and psychological counseling would give her any relief from its symptoms. The doctor’s testimony for Taco Bell described the claimant as a “symptom magnifier,” did not believe that her symptoms evidenced CRPS, and questioned the validity of the tremor. The trial court weighed the credibility of the testimony and determined that the claimant suffered a permanent disability to her body as a whole.

The Tennessee Supreme Court applied _Dotson_’s holding and determined that the trial court erred in awarding body as a whole benefits. While there was some evidence of tenderness in the claimant’s left arm, the medical evidence confirmed that it was from overuse, not from the spread of CRPS. Similarly, if the claimant in this Note’s fact scenario experienced some pain in her opposite extremity, objective evidence

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148. Compare _Dotson_, 160 S.W.3d at 503 (finding that because Dotson’s injury was confined to a scheduled member, his award was limited exclusively to what the workers’ compensation statutes provided), with _Barton v. Nev. Poultry Co._, 110 N.W.2d 660, 664–65 (Iowa 1961) (Larson, J., dissenting) (arguing the legislature had provided a clear recovery limit on scheduled members, and the province of the legislature should not be invaded).


150. _Id._ at *5.

151. _Id._

152. _Id._

153. _Id._

154. _Id._ at _Id._ (quoting _Dotson v. Rice-Chrysler-Plymouth-Dodge, Inc._, 160 S.W.3d 495, 501 (Tenn. 2005) (“[W]here [CRPS] affects a scheduled member alone, an award of permanent disability benefits is limited exclusively to what the schedule for that member provides.”)).

155. _Id._ (noting that overuse caused some pain in the claimant’s left arm, but that there was “no medical or lay testimony that [CRPS] symptoms have spread beyond [a scheduled member], her right arm”). Pain in an opposite limb from the one affected by CRPS is common due to overcompensating for the CRPS, however, it should be distinguished from an actual spread of CRPS. Jahangir Maleki et al., _Patterns of Spread in Complex Regional Pain Syndrome, Type I (Reflex Sympathetic Dystrophy)_ , 88 PAIN 259, 263 (2000) (finding “compensatory overuse of the opposite extremity was suspected” in two out of the four cases of mirror image spread).
should support the spread of CRPS. If that evidence is unavailable, the claimant’s injury should be awarded as a scheduled loss.

V. CONCLUSION

This Note presented an introduction to CRPS, a disease that will no doubt have a significant impact on the future of workers’ compensation. The controversies surrounding the disease will plague doctors and researchers for years to come. Until those controversies are fully resolved, the legal community has a duty to use medical evidence and current studies to the advantage of its clients.

This Note also presented a scenario containing a set of facts that would test the courts’ willingness to adhere to the legislature’s schedule. The factual scenario should logically result in the claimant’s receipt of scheduled permanent partial disability benefits; however, as evidenced in Barton and Collins, what in all practical minds should be true is not always so.

This Note challenges legal practitioners to hold doctors, the administrative and court system, and themselves accountable for the mistaken interpretation of the legislature’s schedule found in Collins and Barton; these parties play a vital role in determining the future treatment of CRPS in the workers’ compensation system. Doctors should stay up-to-date on medical research regarding diagnosis and treatment of CRPS. Likewise, workers’ compensation attorneys must stay current with legal and medical issues in order to properly represent their clients. It is up to attorneys to present the arguments raised by the Tennessee Bar and reverse the damage done by Collins. Current medical findings and arguments against judicial expansion of the schedule are perhaps an employer or insurance company’s most powerful tools to overrule Collins. While the legislature may continue to tolerate courts’ expansion of the schedule, members of the bar should not.

The judiciary, however, may play the most important role. It is apparent that judicial legislation took place in Barton and that this precedent was followed in Collins. In other cases involving workers’ compensation, the courts have been willing to “strive to be true to the legislature’s purpose in providing this statutory remedy.”156 The Smith case may evidence courts’ hesitation to continue down the slippery slope created by Collins and courts’ willingness to defer to an agency’s factual

determinations. If presented with a fitting CRPS case, only time will tell if the judiciary is willing to abandon its flawed precedent for a more logical holding.

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