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Workers' Compensation - The District Court Should Make the Initial Determination of Jurisdiction in Workers' Compensation Cases Involving Intentional Tort Claims - Eldridge v. Circle K Corp.

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WORKERS' COMPENSATION—The District Court Should Make the Initial Determination of Jurisdiction in Workers' Compensation Cases Involving Intentional Tort Claims— *Eldridge v. Circle K Corp.*

I. INTRODUCTION

In *Eldridge v. Circle K Corp.*,[1] a case of first impression, the New Mexico Court of Appeals held unanimously that when an employee claims a cause of action based in common law on deliberate, intentional injury by the employer, the district court should, at the claimant's request, make the initial determination of jurisdiction.[2] Hence, under these circumstances the district court will decide whether the matter lies within the jurisdiction of the courts as a tort case or within the jurisdiction of the workers' compensation system. Upon the claimant's request, the workers' compensation judge should defer or suspend action until a court resolves the tort claim.[3] If the claimant's tort action fails, then the workers' compensation proceeding can proceed.[4] Thus, employees who assert intentional tort claims against their employers may bring their actions to the district court first, where they will be afforded full discovery, actual confrontation of witnesses, and the right to a jury trial, which they would not have in a workers' compensation proceeding.[5] *Eldridge* is notable because it operates as an exception to the New Mexico Workers' Compensation Act's[6] exclusivity provision.[7]

This Note provides an historical background of the New Mexico Workers' Compensation Act, the Workers' Compensation Administration Act,[8] and the primary jurisdiction doctrine as they relate to *Eldridge*. It also examines the rationale of the *Eldridge* court and explores the decision's implications.

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1. 123 N.M. 145, 934 P.2d 1074 (Ct. App.), *cert. denied*, 122 N.M. 808, 932 P.2d 498 (1997).
2. *See id.* at 151, 934 P.2d at 1080.
3. *See id.*
4. *See id.*
5. *See id.* at 150, 934 P.2d at 1079.
6. N.M. STAT. ANN. §§ 52-1-1 to -70 (Repl. Pamp. 1991 & Cum. Supp. 1997).
7. *See* N.M. STAT. ANN. § 52-1-6(E) (Repl. Pamp. 1991 & Cum. Supp. 1997)(providing exclusive remedies, whereby no cause of action covered by the Act can be brought outside the Worker's Compensation scheme); *See also* N.M. STAT. ANN. § 52-1-6(D) (Repl. Pamp. 1991 & Cum. Supp. 1997) (providing that employer and employee surrender their rights to other actions when they comply with the Act's provisions); N.M. STAT. ANN. § 52-1-8 (Repl. Pamp. 1991 & Cum. Supp. 1997) (providing that an employer who complies with the Act is not subject to other liability); N.M. STAT. ANN. § 52-1-9 (Repl. Pamp. 1991). In delineating the exclusivity of the right to compensation, the Act provides:

> The right to the compensation provided for in this act, in lieu of any other liability whatsoever, to any and all persons whomsoever, for any personal injury accidentally sustained or death resulting therefrom, shall obtain in all cases where the following conditions occur:
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> A. at the time of the accident, the employer has complied with the provisions thereof regarding insurance;
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> B. at the time of the accident, the employee is performing service arising out of and in the course of his employment; and
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> C. the injury or death is proximately caused by accident arising out of and in the course of his employment and is not intentionally self-inflicted.

N.M. STAT. ANN. § 52-1-9 (Repl. Pamp. 1991)(internal citation omitted).

8. N.M. STAT. ANN. §§ 52-5-1 to -22 (Repl. Pamp. 1991 & Cum. Supp. 1997).

II. STATEMENT OF THE CASE

On August 29, 1993, Paul Sedillo was working for Circle K on the late night shift.[9] A customer attempted to pay for merchandise with a stolen credit card, and while Sedillo was trying to verify the credit card, the customer left the store. Sedillo followed the customer into the parking lot, apparently to obtain the license number of his car. The customer shot Sedillo, who later died. Sedillo was survived by his minor daughter, Amelia.

On November 19, 1993, Circle K filed its own action with the Workers' Compensation Administration (WCA) requesting a determination of benefits due to Sedillo's child. Tracey Eldridge, the child's mother, was appointed personal representative for the estate with regard to the workers' compensation action. Ms. Eldridge, in her capacity as Amelia's personal representative, filed a motion to dismiss from the WCA for lack of jurisdiction. She argued that Circle K, as an employer, had no standing to invoke jurisdiction of the Workers' Compensation Act (the Act).

On March 10, 1994, Eldridge and Lawrence Sedillo, the decedent's brother, filed an action in district court on behalf of the estate against Circle K for intentional wrongful acts, including: wrongful death, intentional tort, breach of contract, intentional infliction of emotional distress, and loss of consortium. The estate claimed that Circle K required clerks to confront and follow shoplifters and to work alone on the late night shift. The estate alleged that this procedure was a deliberate policy of management calculated to save money at the expense of employee safety.

On June 2, 1994, the workers' compensation judge (WCJ) denied Eldridge's motion to dismiss and permitted the parties to begin discovery. On November 21, 1995, a formal hearing was held and the WCJ issued an order awarding the estate compensation for accidental death under the Act. The WCJ determined that the WCA had jurisdiction to decide if Circle K's acts were intentional or whether Sedillo's death was caused by accident. The WCJ determined that the estate failed to establish an intentional wrong that would fall outside the Act. Eldridge appealed the WCJ's order on behalf of the estate to the New Mexico Court of Appeals.[10] The tort suit in district court was pending at the time of *Eldridge*.

The court of appeals decided that Circle K, in its capacity as an employer, possessed standing to invoke the Act's jurisdiction. Thus, an employer could bring a workers' compensation action before the WCA. Nevertheless, the court held that when an employee claims a cause of action based on deliberate, intentional injury by the employer, the district court should make the initial determination of jurisdiction. Upon the claimant's request, the WCJ should defer or suspend action until the tort claim is resolved. If the claimant's tort action fails, then the workers' compensation proceeding can proceed.

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9. *See Eldridge*, 123 N.M at 146, 934 P.2d at 1075. Unless otherwise noted, the facts in this section are taken from Eldridge v. Circle K Corp., 123 N.M. 145, 146-47, 934 P.2d 1074, 1075-76 (Ct. App.), *cert. denied*, 122 N.M. 808, 932 P.2d 498 (1997).

10. *See* N.M. STAT. ANN. § 52-5-8(A) (Repl. Pamp. 1991), which states that "[a]ny party in interest may, within thirty days of mailing of the final order of the workers' compensation judge, file a notice of appeal with the court of appeals." *Id.*

III. HISTORICAL BACKGROUND

A. *The New Mexico Workers' Compensation Act*

Under the original Workers' Compensation Act,[11] the district court had jurisdiction over workers' compensation claims. However, the New Mexico legislature made significant changes to the Act in 1986, 1987, and 1990.[12] In 1986 the legislature created the Workers' Compensation Administration[13] to resolve workers' compensation claims. The legislature's purpose in creating the WCA was "to assure the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to employers who are subject to the provisions of the Workers' Compensation Act."[14]

Before 1986, only the worker could file a claim after the employer failed or refused to pay compensation.[15] The 1986 Amendments permit any party to file a claim with the WCA director when a dispute arises under the Act.[16] Once a claim is filed, the WCA attempts to resolve it informally and within sixty days it issues a recommendation for resolution.[17] If either party rejects the recommendation within thirty days of receipt of it, the claim is assigned to a WCJ for a hearing.[18] Within thirty days of the mailing of the WCJ's final order, a party may file a notice of appeal with the court of appeals.[19]

To invoke coverage of the Act, the claimant must sustain a personal injury that is accidental and arises out of and in the course of the claimant's employment.[20] The Act's remedies are exclusive if it covers the claim.[21] However, the absence of any one of these elements bars recovery under the Act and removes any existing cause of action from its exclusivity provisions.[22] Thus, if employees can prove that their injuries were not the result of an accident, or that their injuries did not arise out of and in the course of employment, they may have a cause of action that falls outside of the Act. For example, the exclusivity provision of the Act does not bar a common-law action for damages where the injury was the result of an actual intent of the employer to injure the worker.[23]

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11. *See* N.M. STAT. ANN. §§ 52-1-1 to -5-14 (1978).

12. *See* Kelly Brooks et al., *Survey, Workers' Compensation*, 22 N.M. L. REV. 845 (1992).

13. *See* Workers' Compensation Administration Act N.M. STAT. ANN. §§ 52-5-1 to -22 (Repl. Pamp. 1991 & Cum. Supp. 1997).

14. N.M. STAT. ANN. § 52-5-1 (Repl. Pamp. 1991).

15. *See* Gallegos v. City of Albuquerque, 115 N.M. 461, 463, 853 P.2d 163, 165 (Ct. App. 1993).

16. *See* N.M. STAT. ANN. § 52-5-5(A) (Supp. 1997).

17. *See* N.M. STAT. ANN. § 52-5-5(C) (Supp. 1997).

18. *See id.*

19. *See* N.M. STAT. ANN. § 52-5-8(A) (Repl. Pamp. 1991).

20. *See* Hernandez v. Home Educ. Livelihood Program Inc., 98 N.M. 125, 127, 645 P.2d 1381, 1383 (Ct. App. 1982). *See also* N.M. STAT. ANN. § 52-1-9 (Repl. Pamp. 1991) (providing an exclusive right to compensation in all cases where the employer complies with the Act, the employee's injury arises out of and in the course of employment, and the injury is proximately caused by accident).

21. *See* N.M. STAT. ANN. § 52-1-6(E) (Repl. Pamp. 1991) (stating that Workers' Compensation Act provides exclusive remedies, and no cause of action covered by the Act can be brought outside it).

22. *See Hernandez*, 98 N.M. at 127, 645 P.2d at 1383.

23. *See* Sanford v. Presto Mfg. Co., 92 N.M. 746, 594 P.2d 1202 (Ct. App. 1979) (holding that common-law liability of employer outside the Act is limited to injuries deliberately inflicted). *See also* Maestas v. El Paso Natural Gas Co., 110 N.M. 609, 798 P.2d 210 (Ct. App. 1990) (finding that employee's common-law claims

In *Johnson Controls World Services Inc. v. Barnes*,[24] the New Mexico Court of Appeals defined the actual intent test. *Johnson Controls* involved the sufficiency of a complaint.[25] The employee, Barnes, alleged that the employer had intentionally engaged in unsafe work practices and ordered him to perform work even though it was aware that physical contact with toxic wastes contained in the tanks would injure him.[26] Barnes also alleged that the employer had deliberately and intentionally failed to warn him adequately of the known dangers involved.[27] The employer moved to dismiss the complaint, claiming that Barnes' allegations were barred because the Act provided his exclusive remedy.[28] In response, Barnes claimed that his injuries were caused by the intentional or reckless conduct of his employer, who knew that injuries were substantially certain to result from the work the employee was assigned to perform.[29]

The court in *Johnson Controls* disagreed with the employee's substantially certain standard; to get past the Act's exclusivity provision, an employee must show that the employer possessed an actual intent to harm the employee.[30] Thus, the court concluded that the actual intent test involves two inquiries: first, "did the employer intend to commit the alleged act"; and second, "do the circumstances support a reasonable inference that the employer directly intended to harm the worker"?[31] If an employee can sufficiently allege both prongs of the actual intent test, the employee can avoid the Act's exclusivity provision.

Many injured employees seek to avoid the Act's exclusivity provision and bring their claims to a district court because the court offers several advantages that are not available in a workers' compensation proceeding. Courts offer full discovery, actual confrontation of witnesses, and the right to a jury trial. Most importantly, injured employees could receive larger damage awards in district court than they would receive in the WCA.

On the other hand, injured employees may forego possible claims outside the Act because of the WCA's benefits. Injured employees usually will receive compensation quicker under a workers' compensation claim than they would if they went to court. Workers' compensation usually does not require lengthy and costly hearings. Attorney's fees are regulated by statute.[32] While issues of fault can enter

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against employer for injury sustained during scope and course of employment are restricted to injuries deliberately or intentionally inflicted); Gallegos v. Chastain, 95 N.M. 551, 624 P.2d 60 (Ct. App. 1981) (holding that the basis for employer's liability outside the Act is an employer's actual intent to injure).

24. 115 N.M. 116, 847 P.2d 761 (Ct. App. 1993).

25. *See id.* at 117, 847 P.2d at 762.

26. *See id.*

27. *See id.*

28. *See id.*

29. *See id.*

30. *See id.* at 121, 847 P.2d at 766, which states:

> Additionally, the inquiry is not whether the employer had an intent to deceive or misrepresent facts . . . but rather whether the employer had an intent to injure the worker. An injury may unintentionally result even though an employer set the stage for the injury by deceiving or misrepresenting facts to the worker.

Id.

31. *Id.*

32. *See* N.M. STAT. ANN. § 52-1-54(I) (Repl. Pamp. 1991 & Cum. Supp. 1997)(providing that attorneys' fees shall not exceed $12,500).

into compensation decisions, usually compensation is assured when a work related injury or death is shown. Under workers' compensation, employees do not have to establish the employer's negligence; the employer is strictly liable for compensating the injured employee without regard to the negligence of either the employer, worker, or co-worker. Furthermore, employers cannot claim the common law defenses available in negligence actions.[33] Thus, injured employees are faced with many strategic considerations before attempting to get past the Act's exclusivity provision in district court.

B. The Primary Jurisdiction Doctrine

In certain cases, both an administrative agency and a court possess jurisdiction to hear an issue. For example, in *Texas & Pacific Railway Co. v. Abilene Cotton Oil Co.*[34] both the federal courts and the Interstate Commerce Commission had jurisdiction to hear an issue involving the reasonableness of tariff rates. To deal with this situation, courts have developed the doctrine of primary jurisdiction under which a court can use its discretionary power to decide whether certain issues otherwise properly in court must be litigated before an administrative agency.[35] Primary jurisdiction "is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties."[36]

The Supreme Court in *Far East Conference v. United States*[37] explained the rationale for invoking primary jurisdiction in its federal context:

> [I]n cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined. Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure.[38]

Administrative agencies are more likely than courts to have greater expertise in a particular area, and their organization and procedures may allow them to perform a more thorough and better informed analysis of the issues.[39] A court will invoke primary jurisdiction "particularly when the issue involves technical questions of fact uniquely within the expertise and experience of an agency."[40]

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33. *See* N.M. STAT. ANN. § 52-1-8 (A)-(C) (Repl. Pamp. 1991).
34. 204 U.S. 426 (1907).
35. *See* Sidney A. Shapiro, *Abstention and Primary Jurisdiction: Two Chips Off the Same Block?—A Comparative Analysis*, 60 CORNELL L. REV. 75, 79 (1974).
36. United States v. Western Pac. R.R. Co., 352 U.S. 59, 63 (1956).
37. 342 U.S. 570 (1952).
38. *Id.* at 574-75.
39. *See* Shapiro, *supra* note 35, at 81.
40. Nader v. Allegheny Airlines Inc., 426 U.S. 290, 304 (1976).

Nevertheless, primary jurisdiction is not a rigid formula for courts to apply; instead, the doctrine is flexible and the court has discretion in its application.[41] For example, in *Nader v. Allegheny Airlines Inc.*[42] the plaintiff brought a common-law tort action based on alleged fraudulent misrepresentation against an air carrier that was subject to the Civil Aeronautics Board ("CAB"). The plaintiff had been bumped from a flight that the air carrier had overbooked.[43] The air carrier allegedly had not informed the plaintiff beforehand about its deliberate overbooking practices.[44] The CAB had authority pursuant to section 411 of the Federal Aviation Act of 1958 to investigate and determine whether any air carrier has been or is engaged in unfair or deceptive practices.[45] The issue before the Court was whether the CAB must be given the opportunity to determine if the air carrier's alleged failure to disclose its practice of deliberate overbooking is a deceptive practice under section 411 before the plaintiff's common-law action could proceed in court.[46] If the Court answered this question in the affirmative, and the CAB found that the air carrier had not violated section 411, then the plaintiff could not bring the action to court.

The Court declined to invoke primary jurisdiction, thereby deciding that the CAB did not have to be given the opportunity to determine if the air carrier's alleged failure to disclose its practice of deliberate overbooking is a deceptive practice.[47] It reasoned that a CAB determination of the reasonableness of the alleged deceptive practice would not be informed by an evaluation of the economics or technology of the regulated air carrier industry.[48] In an action for fraudulent misrepresentation, the standards to be applied "are within the conventional competence of the courts, and the judgment of a technically expert body is not likely to be helpful in the application of these standards to the facts of this case."[49] Hence, if an issue is within the traditional competence of the courts, the doctrine of primary jurisdiction need not be invoked.

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41. *See* State *ex rel.* Norvell v. Arizona Public Service Co., 85 N.M. 165, 171, 510 P.2d 98, 104 (1973). *See also* Wisconsin Collectors Ass'n v. Thorp Fin. Corp., 145 N.W.2d 33, 36-37 (Wisc. 1966), which states in part:

> [W]e believe it improper to couch such priority in terms of power or jurisdiction. The standard, in our opinion, should not be power but comity. The court must consider which course would best serve the ends of justice. If the issue presented to the court involves exclusively factual issues within the peculiar expertise of the commission, the obviously better course would be to decline jurisdiction and to refer the matter to the agency. On the other hand, if statutory interpretation or issues of law are significant, the court may properly choose in its discretion to entertain the proceedings. The trial court should exercise its discretion with an understanding that the legislature has created the agency in order to afford a systematic method of factfinding and policymaking and that the agency's jurisdiction should be given priority in the absence of a valid reason for judicial intervention.

Id.

42. 426 U.S. 290 (1976).
43. *See id.* at 292-93.
44. *See id.* at 295.
45. *See id.* at 297.
46. *See id.* at 298.
47. *See id.* at 307.
48. *See id.*
49. *Id.* at 305-06 (footnote omitted).

IV. RATIONALE OF THE ELDRIDGE DECISION

The *Eldridge* court stated that in appeals from administrative agencies, the "reviewing court may accord deference to an agency's determination on factual matters involving agency expertise, [but] the court is not bound by the agency's interpretation of its jurisdiction."[50] As a preliminary matter, the court held that Circle K had standing to bring suit before the WCJ, even in death cases.[51] The right to initiate a claim had once been the worker's alone,[52] but the New Mexico legislature amended the Act in 1986 to allow an employer or insurer to bring a workers' compensation claim.[53] Thus, the clear legislative intent was to allow employers to bring claims, even in death cases.[54]

Next the court decided which forum, the WCA or the district court, had jurisdiction to decide cases where an employee is injured in the course of employment and claims an intentional tort against the employer.[55] New Mexico courts had ruled in several earlier cases that the Act's exclusivity provision did not bar all tort actions against the employer.[56] Therefore more than one forum may have jurisdiction over the general subject matter depending on how the claim is characterized.[57] "The possibility of overlapping, concurrent jurisdiction," according to *Eldridge*, "raises a potential problem which, unless resolved, is capable of repetition."[58]

Concurrent jurisdiction would add unnecessarily to the WCJ's workload and "burden litigants unfairly with the complexity and expense of dual-track

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50. Eldridge v. Circle K Corp., 123 N.M. 145, 147, 934 P.2d 1074, 1076 (Ct. App.), *cert. denied*, 122 N.M. 808, 932 P.2d 498 (1997) (citing Morningstar Water Users Ass'n v. New Mexico Pub. Util. Comm'n, 120 N.M. 579, 583, 904 P.2d 28, 32 (1995)).

51. *See Eldridge*, 123 N.M. at 148, 934 P.2d at 1077. "The parties stipulated that Sedillo's death arose out of and in the course of his employment with Circle K", which meant that Circle K would be liable under the Act for Sedillo's injuries if the injuries were the result of an accident. *Id. See also* N.M. STAT. ANN. § 52-1-2 (Repl. Pamp. 1991) (providing that an employer is liable to a worker injured by accident arising out of and in the course of employment).

52. *See* discussion *supra* Part III.A.

53. *See* N.M. STAT. ANN. § 52-5-5(A) (Repl. Pamp. 1997). "When a dispute arises under the Workers' Compensation Act . . . *any party* may file a claim with the director . . . ." *Id.* (emphasis added).

54. *See Eldridge*, 123 N.M. at 148, 934 P.2d at 1077. Note that one reason an employer may want to initiate a workers' compensation claim is to obtain a clear determination of benefits due the injured employee. Also, a determination of benefits under the Act will likely be less than what an employer might have to pay if it was found liable under a common-law tort claim.

55. *See id.* at 150, 934 P.2d at 1079.

56. *See* Michaels v. Anglo Am. Auto Auctions, Inc., 117 N.M. 91, 93, 869 P.2d 279, 281 (1994) (holding that an action for retaliatory discharge is not barred by the workers' compensation exclusivity provision); Johnson Controls World Servs., Inc. v. Barnes, 115 N.M. 116, 118, 847 P.2d 761, 763 (Ct. App. 1993) (finding that the exclusivity provision does not preclude common-law action for damages when the injury is not accidental but intentionally inflicted by employer or the deliberate consequence of employer's behavior); Maestas v. El Paso Natural Gas Co., 110 N.M. 609, 611-12, 798 P.2d 210, 212-13 (Ct. App. 1990) (same); Gallegos v. Chastain, 95 N.M. 551, 554, 624 P.2d 60, 63 (Ct. App. 1981) (holding that an actual intent to injure by employer could be basis for liability outside workers' compensation act); Sanford v. Presto Mfg. Co., 92 N.M. 746, 747, 594 P.2d 1202, 1203 (Ct. App. 1979) (same). *See also* Coleman v. Eddy Potash, Inc., 120 N.M. 645, 653, 905 P.2d 185, 193 (1995) (holding that the exclusivity provision did not bar worker's claims against former employer for intentional spoliation of evidence); Taylor v. Van Winkle's IGA Farmer's Mkt., 122 N.M. 486, 488, 927 P.2d 41, 43 (Ct. App.), *cert. denied*, 122 N.M. 416, 925 P.2d 882 (1996) (district court did not err in determining it had jurisdiction over worker's tort action and default judgment not void for lack of subject matter jurisdiction).

57. *See Eldridge*, 123 N.M. at 149, 934 P.2d at 1078.

58. *Id.*

litigation."[59] Furthermore, by deciding that Sedillo's death was accidental, the WCJ indirectly decided against the estate's claim for intentional tort.[60] This finding had a direct impact on the estate's tort claims, even though the WCJ possesses no jurisdiction to decide matters of common law.[61] Further complicating the situation, WCJ determinations are likely to be completed before any parallel court litigation.[62] This situation would add to the district court's burden because it "would have to decide what weight, if any, to place on the administrative findings."[63] Thus, in the interest of sound judicial policy, the *Eldridge* court sought to create an orderly procedure for the parties.[64]

The *Eldridge* court went on to decide which forum, the WCJ or the district court, should determine jurisdiction where an employee has been injured in the course of employment and claims an intentional wrongful act against the employer. First, it evaluated the primary jurisdiction doctrine.[65] The principal criterion in deciding whether the doctrine of primary jurisdiction applies is the need for the particular expertise of the administrative agency to resolve factual issues.[66] When an issue is within the conventional competence of the judiciary, however, an agency's expertise may be unnecessary and inappropriate.[67]

The *Eldridge* court recognized two factors that favored proceeding first in district court. "First, the WCA was created to manage benefit payments to workers injured in work-related accidents by the use of specialized tribunals that could quickly and efficiently process a large volume of cases by the use of informal and expedited procedures."[68] This expertise, however, gives a WCJ no advantage over a district court in resolving a common-law claim for intentional wrongdoing.[69] "Second, the district court is a constitutional court of general jurisdiction in which parties are afforded full discovery, actual confrontation of witnesses, and the right to a jury trial."[70] The *Eldridge* court concluded that the estate's common-law tort claim did not invoke the expertise of the WCA.[71] Rather it is the judiciary, not the agency, that determines jurisdiction and in particular whether the estate's claim is within coverage of the Act.[72]

The *Eldridge* court indicated that there is an "occasional need for judge-made remedies in the interest of 'coordination between the judicial and administrative

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59. *Id.*
60. *See id.*
61. *See id.*
62. *See id.*
63. *Id.* (citation omitted).
64. *See id.*
65. *See id.*
66. *See* State *ex rel.* Norvell v. Arizona Pub. Serv. Co., 85 N.M. 165, 170, 510 P.2d 98, 103 (1973).
67. *See Eldridge*, 123 N.M. at 150-51, 934 P.2d at 1079-80 (citing Nader v. Allegheny Airlines, Inc., 426 U.S. 290, 305-06 (1976)). *See also supra* text accompanying notes 37-40.
68. *Eldridge*, 123 N.M. at 150, 934 P.2d at 1079. *See also* N.M. STAT. ANN. § 52-5-1 (Repl. Pamp. 1991 & Cum. Supp. 1997) (indicating that the legislature's intent is to induce the quick and efficient delivery of benefits at a reasonable cost to the employer).
69. *See Eldridge*, 123 N.M. at 150, 934 P.2d at 1079.
70. *Id.*
71. *See id.*
72. *See id.* at 151, 934 P.2d at 1080.

arms of government.'"[73] The judiciary's role is to harmonize statutory language to achieve the overall legislative purpose when applying the language literally would lead to counterproductive, inconsistent, and absurd results.[74] The *Eldridge* court refused to turn a blind eye to the current state of affairs. WCJ determinations in cases involving intentional tort claims running concurrently with district court determinations of the same issues were "wrong both as a matter of judicial policy and from a statutory and constitutional perspective."[75]

V. ANALYSIS AND IMPLICATIONS

The *Eldridge* court decided that the district court, not the WCA, should make the initial determination of jurisdiction when an employee brings a common-law claim based on deliberate, intentional injury by the employer.[76] Plaintiffs have a clearer understanding of when they may file a claim in district court when the injuries arise out of and in the course of employment. Employers realize that, after *Eldridge*, although they may file a claim with the WCA to determine the benefits due to an injured employee, the WCA determination will be stayed if the employee files a common-law intentional tort claim in district court.

Eldridge makes sense from a practical standpoint. If the court had allowed concurrent jurisdiction between the WCA and the district court in cases where an employee alleged deliberate and intentional injuries, then many inefficient consequences would result. If parallel proceedings take place, where an employee files a common-law intentional tort claim in district court and an employer files for a workers' compensation determination with the WCA, litigants are unfairly burdened with the complexity and expense of dual-track litigation.[77] The same issues will be litigated at the same time before both the WCA and the district court. In both proceedings the arguments are the same. In the WCA, the employee would attempt to get past the Act's exclusivity provision so the case is litigated in district court, while the employer would attempt to keep the case within the WCA. In district court the positions would be identical. Different rules of procedure and discovery would add needless confusion to the situation.

It may appear remarkable that the *Eldridge* court declined to invoke the doctrine of primary jurisdiction to allow the WCA the initial responsibility to resolve the dispute. After all, courts are usually reluctant to become involved in situations where an administrative agency exists that specializes in an area of law,[78] as the WCA specializes in cases involving workplace injuries. However, the WCA specializes in matters relating to workers' compensation, such as insurance

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73. *Id.* (quoting State *ex rel.* Norvell v. Arizona Pub. Serv. Co., 85 N.M. 165, 170, 510 P.2d 98, 103 (1973)).

74. *See id.*, 123 N.M. at 151-52, 934 P.2d at 1080-81. Examples of counterproductive, inconsistent, and absurd results could include the WCA choosing the employer's arguments as to the amount of medical damages due to the injured employee, while a district court agrees with the employee's arguments.

75. *Id.* at 152, 934 P.2d at 1081.

76. *See id.* at 151, 934 P.2d at 1080.

77. *See id.* at 149, 934 P.2d at 1078.

78. *See, e.g.*, Far East Conference v. United States, 342 U.S. 570 (1952) (finding that the district court could not rule on suit involving dual-rate system enforced in concert by steamship carriers engaged in foreign trade until the Federal Maritime Board heard the question).

coverage, employment status, average weekly wage, impairment rating, and permanent and partial disability determinations.[79] Unlike a district court, the WCA has little, if any, experience in hearing intentional tort claims.[80] Thus, in the interest of "coordination between the judicial and administrative arms of government,"[81] and because invoking primary jurisdiction would not "serve the ends of justice,"[82] *Eldridge* correctly decided that district courts should make the initial determination of jurisdiction when employees allege a common-law intentional tort claim against their employers for injuries arising out of and in the course of employment.

The *Eldridge* court, however, failed to emphasize the difficult burden imposed on employees who challenge the Act's exclusivity provision.[83] The court states simply, "[i]n the limited circumstance of this type of case, when the worker claims a cause of action based on deliberate, intentional injury by the employer . . . we hold that the district court should exercise initial jurisdiction to determine jurisdiction."[84] However, alleging a deliberate, intentional injury on the employer's part is one thing, while proving it in court will be quite a different and more arduous task.

To overcome the Act's exclusivity provision, an employee must show an employer's "actual intent" to harm the employee.[85] Proving actual intent will be difficult, as *Eldridge* itself demonstrates. The estate in *Eldridge* sought damages against Circle K for various intentional wrongful acts.[86] It claimed that Circle K required clerks to confront and follow shoplifters and to work alone on the late night shift.[87] It alleged that this procedure was a deliberate policy of management calculated to save money at the expense of employee safety.[88] These allegations probably would not be enough to pass the actual intent test[89] and thereby overcome the Act's exclusivity provision. The estate had not alleged that Circle K possessed

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79. *See Eldridge*, 123 N.M. at 150, 934 P.2d at 1079.

80. *See id.* at 151, 934 P.2d at 1080, which reads in part:

> Neither counsel could cite a New Mexico case in which a WCJ had decided the kinds of issues that characteristically arise in an intentional tort action. To the contrary, disputes involving whether the Act is the exclusive remedy for a worker have arisen in district court with a district judge determining the nature of the claims and the applicability of the Act.

Id.

81. State *ex rel.* Norvell v. Arizona Pub. Serv. Co., 85 N.M. 165, 170, 510 P.2d 98, 103 (1973). *See also* United States v. Morgan, 307 U.S. 183, 191 (1939), which states in part:

> [I]n construing a statute setting up an administrative agency and providing for judicial review of its action, court and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated objects of the statute. Court and agency are the means adopted to attain the prescribed end, and so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through coordinated action.

Id.

82. *Norvell*, 85 N.M. at 171, 510 P.2d at 104 (quoting Wisconsin Collectors Ass'n v. Thorp Fin. Corp., 145 N.W.2d 33, 37 (Wisc. 1966)).

83. *See* N.M. STAT. ANN. § 52-1-6(E) (Repl. Pamp. 1991) (providing exclusive remedies whereby no cause of action covered by the Act can be brought outside the Workers' Compensation scheme).

84. *Eldridge*, 123 N.M. at 151, 934 P.2d at 1080.

85. *See* discussion *supra* Part III.A.

86. *See Eldridge*, 123 N.M. at 146-47, 934 P.2d at 1075-76.

87. *See id* at 147, 934 P.2d at 1076.

88. *See id.*

89. *See* Johnson Controls World Servs., Inc. v. Barnes, 115 N.M. 116, 121, 847 P.2d 761, 766 (Ct. App. 1993).

an actual intent to harm its deceased employee, Paul Sedillo. Circle K's policies can merely be said to have "set the stage"[90] for Sedillo's death through its controversial policy of requiring clerks to confront and follow shoplifters and to work alone on the late night shift. Although this conclusion may not serve the ends of justice, it is perhaps the price to be paid because "[t]he exclusivity provided for by the New Mexico Workmen's Compensation Act is the product of a legislative balancing of the employer's assumption of liability without fault with the compensation benefits to the employee."[91]

Moreover, the *Eldridge* court failed to address the policy implications of its decision. For example, employers may be concerned that too many employees will be filing claims in district court because courts offer the advantages of full discovery, actual confrontation of witnesses, and the right to a jury trial. Also, injured employees could receive larger damages awards in district court than they would receive in the WCA. Nevertheless, these concerns are unwarranted for a number of reasons. First, employees must have "good ground" for filing a claim in district court.[92] Second, the employee must allege and prove that the employer actually intended to cause injury. This is an arduous task that in many cases may not be worth the additional time and expense. Third, many injured workers and their families are likely to require compensation as soon as possible, so the WCA's expedited procedures would be to their advantage. Fourth, if *Eldridge* proves problematic, the legislature can always amend the Workers' Compensation Act.

VI. CONCLUSION

In *Eldridge*, the New Mexico Court of Appeals held unanimously that the district court, not the WCA, should make the initial determination of jurisdiction when an employee claims a common-law cause of action based on deliberate, intentional injury by the employer. Upon an employee's request, the WCA must defer or suspend action until the tort claim is resolved in district court and an appellate court if necessary. In making this decision, *Eldridge* declined to invoke the doctrine of primary jurisdiction. Although, legally, dual-track litigation could have occurred, *Eldridge* shut the door on that impractical possibility. Coordination between the workers' compensation system and district courts will be more efficient as a result of *Eldridge*. Nevertheless, because of the actual intent test,[93] it will be extremely difficult for employee plaintiffs to prevail in district court.

JUSTIN LESKY

90. *See id. See also* discussion *supra* Part III.A.
91. Dickson v. Mountain States Mutual Casualty Co., 98 N.M. 479, 480, 650 P.2d 1, 2 (1982).
92. *See* N.M. R. CIV. P. 1-011.
93. *See Johnson Controls*, 115 N.M. at 121, 847 P.2d at 766.