REVISITING *RARO V. ECC*: OCCUPATIONAL DISEASES, IMPOSSIBLE CONDITIONS, AND SOCIAL INSURANCE IN EMPLOYEES' COMPENSATION*

*Liam Calvin Joshua C. Lu***

ABSTRACT

In the toolkit of the modern welfare state, workers' compensation is a form of social insurance that has been devised as a remedy to compensate for the ever-present risk of occupational injury and disease that looms over every working person. In the Philippines, Employees' Compensation ("EC"), a product of the Labor Code, provides relief to more than forty million workers for work-related injuries and diseases. However, in the landmark case of *Raro v. ECC*, the Supreme Court dealt a blow to EC's efficacy in achieving its policy goals and restricted its discretion in providing relief to claimants. In denying the eponymous Raro's claim, the Court held that an occupational disease may only be compensable when the claimant can show "positive proof" that the illness was caused by employment and the risk of contracting the disease is increased by the working conditions. This paper presents a critique of the Court's holding and ratio in *Raro,* and offers an alternative framework for assessing EC claims with regard to occupational diseases, taking into account (1) the incentives faced by EC's administrators; and (2) the nature of medical science in relation to occupational diseases and cancers in particular.

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The COVID-19 pandemic was, and continues to be, a distinct challenge to the working person. In addition to the adversities of daily life, workers would now have to contend with the risk of being infected by an invisible and incurable[1] disease that has already killed more than six million people globally.[2] This represents not only a mental and emotional burden on the worker, but a financial one as well. In addition to the costs of palliative care after the onset of COVID-19 symptoms,[3] ordinary Filipinos bear the costs of prevention, whether through acquiring costly Personal Protective Equipment ("PPE"), or by having to distance themselves from their loved ones.

Lucky then for the Filipino worker that on April 6, 2021, the Employees' Compensation Commission (ECC) passed a Board Resolution classifying COVID-19 as a compensable occupational disease.[4] Under the law, an illness is compensable under Employees' Compensation ("EC") if it is one found under the list of occupational diseases prepared by the ECC.[5] If it is not one of those found in the list, then the claimant has the burden of proving "that the risk of contracting the disease is increased by the working conditions."[6] This is also known in jurisprudence as "proof of increased risk."[7]

Under the Resolution, workers who contracted the virus and seek compensation from the Fund would have to show that the person was "clinically diagnosed and consistent with the history, and signs and symptoms of COVID-19 supported by diagnostic proof to include reverse transcriptase polymerase chain reaction ("RT-PCR") test."[8] In addition to this, the claimant

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[1] Currently, only one medication has been approved to treat COVID-19. No cure is available for COVID-19. Mayo Clinic Staff, *Coronavirus disease 2019 (COVID-19)*, MAYO CLINIC WEBSITE, *at* https://www.mayoclinic.org/diseases-conditions/coronavirus/diagnosis-treatment/drc-20479976 (last accessed Jan. 22, 2023).

[2] World Health Organization (WHO), *WHO Coronavirus (COVID-19) Dashboard*, WHO WEBSITE, *at* https://covid19.who.int/ (last accessed May 20, 2022).

[3] *See, generally,* TS Beng et al., *COVID-19, Suffering, and Palliative Care: A Review*, 39 AM. J. HOSPICE & PALLIATIVE MEDICINE 986 (2022).

[4] Employees' Compensation Commission (ECC) Bd. Res. No. 21-04-14 (2021). Conditions for the Compensability of COVID-19 under the ECC List of Occupational and Work-Related Disease or Annex A of the Amended Rules on Employees' Compensation (EC) [hereinafter "Compensability of COVID-19 Resolution"].

[5] LAB. CODE, bk. IV, tit. II, Rules & Regs. (1987), Rule III, § 1(b).

[6] § 1(b).

[7] Raro v. ECC [hereinafter "*Raro*"], G.R. No. 58445, 172 SCRA 845, 846, Apr. 27, 1989.

[8] Compensability of COVID-19 Resolution.

would also need to show that the contraction of the virus was due to one of the following conditions:

> a. There must be a direct connection between the offending agent or event and the worker based on epidemiologic criteria and occupational risk;
> b. The tasks assigned to the worker would require frequent face-to-face and close proximity interactions with the public or with confirmed cases for healthcare workers;
> c. Transmission occurred in the workplace; or
> d. Transmission occurred while commuting to and from work.[9]

This demonstrates the continued usefulness and salience of workmen's compensation programs to the 21st century working person. In the Philippine scheme of social protection, EC provides compensation to all employees in cases of work-connected injury, disease, or death. Benefits are paid out of the State Insurance Fund ("SIF"), a product of the Labor Code, and is funded from compulsory contributions made by all employers, including the government. In turn, this is managed by the nation's two social security administrators, the Social Security Commission, and the Board of Trustees of the Government Service Insurance System (GSIS). The ECC, a government corporation in its own right,[10] initiates, rationalizes, and coordinates employees' compensation policies between the other two commissions.[11]

The inclusion of COVID-19 under the list of occupational diseases compensable under EC reflects the prevailing needs of employees in the present state of the economy. The risk of contracting COVID-19 remains pervasive in many work environments. However, COVID-19 is not the only disease that threatens workers' lives—many yet wreak havoc on individual employees but remain unexplainable by medical science. Cancers are one such malady that science has yet to fully learn about. As the Supreme Court observed:

> The plight of any cancer patient deserves some serious considerations. We were not to be told that no one is a willing victim of cancer. Inflicted with this dreadful malady, the patient suffers from the trauma of an impending death not to mention the high cost of medical attendance required, only to prolong one's

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[9] *Id.*
[10] LAB. CODE, art. 176(d).
[11] Art. 176(a).

> agony and the hopelessness of any definite cure simply because the origin and cause of cancer are farfetched unresolved.[12]

Despite this, under the current jurisprudential regime, a worker suffering under a type of cancer not listed as an occupational disease which may plausibly have a connection with their work, but cannot furnish proof of this connection, is not entitled to benefits from the SIF. This was the holding in the landmark case of *Raro v. ECC*, where the Supreme Court held that according to the wording of the law, each claimant for employees' compensation would now have to prove their claim by *positive proof* of a work connection to the disease. Important to the holding is the Court's justification: a contrary ruling would burden the SIF and prejudice the other millions of workers that depend on the fund for compensation. As will be demonstrated in this paper, the social insurance model requires that the administrators of the fund adopt a more conservative stance to claims, notwithstanding the directive to "implement the social justice guarantee secured by [the] Constitution."[13]

This paper argues the need to revisit the doctrine in *Raro* in light of new circumstances facing workers suffering occupational diseases. Although the old presumptions enjoyed by the employee were abolished by the Labor Code, this did not mean that the pendulum would have to swing wildly in the reverse, to the prejudice of claimants. The nature of work makes it such that it may prove impossible to submit proof of increased risk, as is required under the law, in certain cases.

The structure of the paper is as follows: the first Part outlines the statutory and jurisprudential history of EC. This discussion will put a particular focus on the jurisprudential history of the doctrine in *Raro*, including the decisions that preceded it; the second Part will dissect *Raro* more fully, and explain the arguments put forward by the majority in support of their decision, as well as the dissents by Justices Sarmiento and Paras; the third Part explores the social insurance model of EC, which underpins the holding of the Court in *Raro*; the fourth Part provides a restatement of the previous rule abolished by *Raro* in light of the particular circumstances of EC; and the fifth Part concludes.

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[12] Gov't Serv. Ins. Sys. (GSIS) v. Ct. of Appeals & Abraham Cate [hereinafter "*Cate*"], G.R. No. 124208, 542 SCRA 367, 375, Jan. 28, 2008.

[13] Cristobal v. ECC [hereinafter "*Cristobal Resolution*"], G.R. No. 49280, 103 SCRA 329, 336, Feb. 26, 1981.

I. MORE THAN NINETY-FIVE YEARS OF EC

A. The Precursor: The Workmen's Compensation Act

Workmen's compensation first evolved out of Germany in the 1880s, and was meant as a substitute for common law trials that frequently resulted in workers losing their cases.[14] The new compensation system was intended to "make liability dependent on a relationship to the job, in a liberal, humane fashion, with litigation reduced to a minimum."[15] Workmen's compensation was intended to "abrogate the common law and the Civil Code relative to obligations arising from non-punishable fault or negligence."[16]

The Philippines' first workmen's compensation law was passed during the American Occupation in 1927,[17] and was patterned after preexisting American law. The law was revolutionary at that time because it dispensed with the need for claimants to prove that it was the employer's negligence that caused the injury, illness, or death—it only became necessary to prove that the contingencies arose out of employment.[18]

Compensation under this system was paid directly by employers to the employees.[19] Under the law, workers would file claims for workers' compensation after first giving notice to their employer of the accident or injury. Thereupon the employer would be required to controvert the worker's claim by proving that the injury, disease, or death was not work-connected, or else was due to (1) the voluntary intent of the employee; (2) the drunkenness of the laborer; or (3) the workers' notorious negligence.[20] In this manner, the process for claiming workmen's benefits was adversarial, with the employer statutorily required to controvert workers' claims.

At the time the law was passed, there was no presumption in favor of the worker. "The injured workman and the employer [were] on equal footing and no presumption [was] given in favor of the one or the other."[21] The

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[14] Samuel B. Horovitz, *Workmen's Compensation: Half Century of Judicial Developments*, 37 PHIL. L.J. 489, 490 (1962).

[15] *Id.*

[16] Murillo v. Mendoza, G.R. No. 46020, 66 Phil. 689, 698 (1938).

[17] Act No. 3428 (1927).

[18] Froilan M. Bacungan, *Welfare Laws*, 47 PHIL. L.J. 379, 380 (1972).

[19] I CESARIO ALVERO AZUCENA, THE LABOR CODE WITH COMMENTS AND CASES 516 (9th ed.).

[20] Act No. 3428 (1927), § 4.

[21] Moises San Agustin, *The Philippine Workmen's Compensation Act (Continuation)*, 9 PHIL. L.J. 211, 223 (1929).

burden of proof rested on the claimant.[22] This obstacle proved difficult for workers to overcome since the requirement that the injury, illness, or death occurred "arising out of and in the course of employment" did not provide a lot of guidance for workers to prove their claim. This provision became a source of much frustration for claimants seeking redress, and has even led the US Supreme Court to remark that this phrase was "deceptively simple and litigiously prolific."[23]

In one case, the Court looked favorably on a claim for death benefits for the heirs of a laborer who crossed Dewey Boulevard (now Roxas Boulevard) to the shore of Manila Bay in order to relieve himself. On his way back, he was run over by a garbage truck that was negligently driven. The Court said that the laborer Andres Taborda's death could still be considered "arising out of employment," since in the course of employment, it was only necessary for him to relieve himself.[24]

But in another case, the Court ruled against an employee killed while returning home from work.[25] Leopoldo Madlangbayan, a collector for the Singer Sewing Machine Company, had just finished with his collections that Sunday afternoon, and was riding his bicycle going home. A truck ran him over and killed him. The Court held that the employer could not be entitled to pay benefits to Madlangbayan's family because "the employer is not an insurer 'against all accidental injuries which might happen to an employee while in the course of employment.'"[26] At the time of Madlangbayan's death, he had already finished his work for the day, and had already left the area where he was authorized to make collections for the company.

Another concern was illnesses that existed prior to the worker's employment but worsened due to the nature and duties of their work. Under the grounds for compensation in the original wording of the law,[27] a preexisting illness could not be compensated, even though employment made

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[22] *Id.*

[23] Cardillo v. Liberty Mut. Ins. Co., 880 U.S. 469, 479 (1947), *cited in* Horovitz, *supra* note 14, at 500.

[24] Bellosillo v. City of Manila, G.R. No. 34522, Nov. 9, 1931, *reported in Digest of Recent Decisions of the Supreme Court*, 11 PHIL. L.J. 190, 192 (1931).

[25] Afable v. Singer Sewing Machine Co., G.R. No. 36858, 58 Phil. 39 (1933).

[26] *Id.* at 42.

[27] Act No. 3428 (1927), § 2. The whole provision reads: "When any employee receives a personal injury from any accident due to and in the pursuance of the employment, or contracts any illness directly caused by such employment or the result of the nature of such employment, his employer shall pay compensation in the sums and to the persons hereinafter specified."

such illness worse. The law required that the illness be *directly caused* by such employment or the result of the nature of such employment.

In one noted case,[28] a driver of a bus company, Simeon Vergara, sought to recover from his employer under the Compensation Law. Vergara's daily hours of service appear to have been long and took him out early in the mornings. He did not have a robust constitution, and was frequently absent from work because of this. He was eventually dropped from the service. During trial, the physician witnesses all agreed that Vergara suffered from heart trouble and bad tonsils, and that the heart trouble was caused by such bad tonsils. However, there was disagreement over whether Vergara's medical troubles arose out of his employment. Justice Malcolm, speaking for the Court, held that Vergara's ailment was not within the grounds for compensation under the law. An "idiopathic disease," or that "which develops gradually or at least imperceptibly and, while it may be attributable to external conditions, is also dependent in part on conditions inherent in the individual," was held not to be compensable under the law.[29]

B. Filling in the Gaps: The 1952 Amendments

Congress was aware of these shortcomings, and in 1952, introduced several amendments to Workmen's Compensation.[30] First, Congress inserted a presumption in favor of claimants. The provision reads:

> Sec. 43. *Presumption.* — In any proceeding for the enforcement of the claim for compensation under this Act, it shall be presumed in the absence of substantial evidence to the contrary —
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> 1. *That the claim comes within the provisions of this Act*;
> 2. That sufficient notice thereof was given;
> 3. That the injury was not occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another;
> 4. That the injury did not result solely from the intoxication of the injured employee while on duty; and
> 5. That the contents of verified medical and surgical reports introduced in evidence by claimants for compensation are correct.[31]

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[28] Vergara v. Pampanga Bus Co. Inc., G.R. No. 44149, 62 Phil. 820 (1936).

[29] *Id.* at 823.

[30] Rep. Act No. 772 (1952). Amendment to Act No. 3428 Re: Employee Compensation for Personal Injuries, Death or Illness.

[31] § 24, which amended § 43 of Act No. 3428. (Emphasis supplied.)

Under this provision, once the claimant has established that the illness supervened *during* the time of his employment, there would arise a rebuttable presumption that the illness arose *out of*, or at least was aggravated by, his employment.[32] This principle became known as the "presumption of compensability."

The statutory presumption of compensation under Section 43(1) of the Workmen's Compensation Act places upon the employer the burden of proving that the employee's injury was not, and could not be, caused or aggravated by the nature of his work.[33] Note that this presumption may be disputed only by substantial evidence.[34]

This change was also reflected in the New Civil Code, enacted earlier in 1950, which provides:

> Owners of enterprises and other employers are obliged to pay compensation for the death of or injuries to their laborers, workmen, mechanics or other employees, even though the event may have been purely accidental or entirely due to a fortuitous cause, if the death or personal injury *arose out of and in the course of the employment*. The employer is also liable for compensation if the employee contracts any illness or disease *caused by such employment or as the result of the nature of employment*. If the mishap was due to the employee's own notorious negligence, or voluntary act, or drunkenness, the employer shall not be liable for compensation. When the employee's lack of due care contributed to his death or injury, the compensation shall be equitably reduced.[35]

Second, Congress also expanded the grounds for compensation to include cases where the worker "contracts tuberculosis or other illness directly caused by such employment, or either aggravated by or the result of the nature of such employment."[36] This became known as the "theory of aggravation."

The two principles allowed for workers to more readily prosecute their claims. The amendments were animated "by the inescapable reality that

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[32] Justiniano v. Workmen's Compensation Commission (WCC), G.R. No. 22774, 18 SCRA 677, 680, Nov. 21, 1966, *citing* Agustin v. WCC, G.R. No. 19957, 12 SCRA 55, Sept. 29, 1964.

[33] A.D. Santos, Inc. v. Vda. de Sapon, G.R. No. 22220, 16 SCRA 791, 795, Apr. 29, 1966.

[34] Vargas v. Phil. Am. Embroideries, Inc., G.R. No. 23762, 34 SCRA 680, 687, Aug. 31, 1970.

[35] CIVIL CODE, art. 1711. (Emphasis supplied.)

[36] Rep. Act No. 772 (1952), § 1, which amended § 2 of Act No. 3428.

a laborer is usually poor and unlettered, and an employer has all the resources to secure able legal advice, which is the reason why the law demands from the latter stricter compliance with the Act."[37]

C. A New System for the New Society: The Labor Code

These principles were swept away when the old Workmen's Compensation law was repealed, and a new system was instituted under the Labor Code. On November 1, 1974, the Workmen's Compensation Act was repealed by the Labor Code (by virtue of Presidential Decree No. 442). On December 27, 1974, Presidential Decree No. 626 (which took effect on January 1, 1975) was issued, which extensively amended the provisions of Title II, Book IV of the Labor Code on EC and SIF.[38]

Under the new Labor Code, the system shifted from one of direct payment to a compensation fund.[39] All employers would now be required to make periodic contributions to the SIF, which would then be used to fund the claims of employees for work-connected injuries or diseases. This change was revolutionary due in part to the way in which claims would now be resolved:

> The new law establishes a state insurance fund built up by the contributions of employers based on the salaries of their employees. The injured worker does not have to litigate his right to compensation. No employer opposes his claim. There is no notice of injury nor requirement of controversion. The sick worker simply files a claim with a new neutral Employees' Compensation Commission which then determines on the basis of the employee's supporting papers and medical evidence whether or not compensation may be paid. The payment of benefits is more prompt. The cost of administration is low. The amount of death benefits has also been doubled.
>
> On the other hand, the employer's duty is only to pay the regular monthly premiums to the scheme. It does not look for insurance companies to meet sudden demands for compensation payments or set up its own funds to meet these contingencies. It does not have to defend itself from spuriously documented or long past claims.

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[37] Rebar Buildings, Inc. v. WCC, G.R. No. 27486, 23 SCRA 485, 490, Apr. 30, 1968.
[38] Orate v. Ct. of Appeals, G.R. No. 132761, 399 SCRA 513, 520–21, Mar. 26, 2003.
[39] Azucena, *supra* note 19, at 520–21.

> The new law applies the social security principle in the handling of workmen's compensation. The Commission administers and settles claims from a fund under its exclusive control. The employer does not intervene in the compensation process and it has no control, as in the past, over payment of benefits. The open ended Table of Occupational Diseases requires no proof of causation. A covered claimant suffering from an occupational disease is automatically paid benefits.
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> Since there is no employer opposing or fighting a claim for compensation, the rules on presumption of compensability and controversion cease to have importance. The lopsided situation of an employer versus one employee, which called for equalization through the various rules and concepts favoring the claimant, is now absent.[40]

Jurisprudence during this era was uniform in finding that the old presumption of compensability and theory of aggravation were abolished under the Labor Code. However, the Court was split in the interpretation of Article 174(*l*) of the Labor Code, which defined "sickness" as "any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment *subject to proof by the employee that the risk of contracting the same is increased by working conditions*."[41] At times, the Court strictly adhered to the requirement of proof, and denied claims for failure to comply with this condition. Still, at other times, the Court was more lenient, citing the liberal and compassionate spirit of the law, and granted claims where no such proof could be presented.

The cases where the Court applied the former rule were clear-cut. In one instance,[42] the Court denied the application of a widow's death benefits after her husband, a mechanic, contracted acute pyelonephritis[43] and bronchopneumonia.[44] The widow argued that her husband's work required him to be in a prone position for a long period of time, which "produced a kinking of the ureters, thereby causing a constant and progressive stagnancy

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[40] De Jesus v. ECC, G.R. No. 56191, 142 SCRA 92, 99–100, May 27, 1986.

[41] LAB. CODE, art. 173(*l*). (Emphasis supplied.)

[42] Sulit v. ECC, G.R. No. 48602, 98 SCRA 483, June 30, 1980.

[43] Pyelonephritis is an acute pyogenic infection of the kidney. Strictures, calculi, tumors or prostatic hypertrophy cause obstruction to the flow of urine and may predispose a person to contract such a disease. It is caused by pus-producing bacteria (like the colon bacilli) which may originate from infected tonsils, carious teeth or other foci of infection in the body and which reach the kidney by way of the bloodstream or lymphatics. *Id.* at 485.

[44] Bronchopneumonia is an infection of the bronchi and lung tissue and is usually a complication of a debilitating disease. *Id.* at 485.

of urine flow which led to infection in the urinary tract and stone formation therein."[45] The Court upheld the ECC's denial of her claim, holding that "the contracting of [the diseases] was not increased by the working conditions of his job."[46] It also held that the Labor Code once and for all abolished the presumption of compensability and the rule on aggravation of illness caused by the nature of the employment, explaining:

> Those radical innovations, the presumption of compensability and the rule on aggravation of illness, which favor the employee, paved the way for the latitudinarian or expansive application of the Workmen's Compensation Law in favor of the employee or worker.
>
> It now appears that after the government had experimented for more than twenty years with such employee-oriented application of the law, the lawmaker found the result to be unsatisfactory because it destroyed the parity or balance between the competing interests of employer and employee with respect to workmen's compensation. The balance was tilted unduly in favor of the workmen.
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> Hence, to restore a sensible equilibrium between the employer's obligation to pay workmen's compensation and the employee's right to receive reparation for work-connected death or disability, the old law was jettisoned and in its place we have the employees' compensation and state insurance fund in the Labor Code, as amended.[47]

The Court applied this strict requirement of positive proof to deny benefits on account of a bookkeeper who died of pancreatic cancer,[48] a prison guard who died of stomach cancer,[49] a midwife who died of liver cirrhosis,[50] and a civil engineer working at the Bureau of Public Highways who suffered from glaucoma and cataracts.[51]

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[45] *Id.*

[46] *Id.* at 486.

[47] *Id.* at 489. One justice expressed his reservation with the abandonment of the "latitudinarian or expansive" jurisprudence. "Any backward step in the rights of labor is always difficult to justify. Those in charge of the innovations in the law would be well advised if they tried their best to be compassionate in applying them." *Id.* at 490 (Barredo, *J.*, *concurring*).

[48] Milano v. ECC, G.R. No. 50545, 142 SCRA 52, May 23, 1986.

[49] Casumpang v. ECC, G.R. No. 48664, 150 SCRA 21, May 20, 1987.

[50] Garol v. ECC, G.R. No. 55233, 168 SCRA 108, Nov. 29, 1988.

[51] Zozobrado v. ECC, G.R. No. 65856, 141 SCRA 136, Jan. 17, 1986.

However, a parallel strand of jurisprudence seemed to provide some leeway. In one such case, the Court applied a "liberal attitude in deciding claims for compensation whenever there is some basis in the facts inferring a work-connection"[52] to grant benefits on account of the death of an employee at the Printing Department of the National Science Development Board. The Court held that rectal malignancy, the cause of the employee's death, was a "borderline case" that warranted a more liberal interpretation of the Labor Code.

The Court would later use this holding in another case, *Panotes v. ECC,*[53] to rule that in borderline cases, "[t]he very fact that the cause of a disease is unknown, creates the probability that the working conditions could have increased the risk of contracting the disease, if not caused by it."[54] The Court used this to award benefits to a widower of an elementary school teacher who died of colon cancer.[55]

The Court even went so far as to say that "actual proof of causation is not necessary to justify compensability,"[56] in order to grant total disability benefits to a government employee in the City of Manila who suffered from a brain tumor. The Court held:

> It is readily admitted in the present case, however, that the etiology of intracranial new growth or brain tumor is as obscure as that of neoplasm elsewhere in the body. Moreover, this Court has, in the case of *Uy vs. WCC* declared that "apparently, tumor is a disease of such nature that the developments of medical science up to now cannot fully explain its causes and the factors that may aggravate or alleviate the progress of the disease." *To require proof of causal connection in this case as a condition for compensability therefore is to require, as admitted by respondent GSIS counsel, the impossible.*[57]

This rule was reiterated in *Nemaria v. ECC*,[58] where the Court held squarely that:

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[52] *Cristobal Resolution*, 103 SCRA 329, 336–38.

[53] Panotes v. ECC [hereinafter "*Panotes*"], G.R. No. 64802, 138 SCRA 595, 603, Sept. 23, 1985.

[54] *Id.*

[55] *Id.*

[56] Mercado v. ECC [hereinafter "*Mercado*"], G.R. No. 60346, 127 SCRA 664, 668, Feb. 20, 1984.

[57] *Id.* at 671. (Emphasis supplied.) It should be noted that the *Uy* case cited by the Court was decided under the regime of the already-repealed Workman's Compensation Act.

[58] [Hereinafter "*Nemaria*"], G.R. No. 57889, 155 SCRA 166, Oct. 28, 1987.

> [T]he requirement that the disease was caused or aggravated by the employment or work applies only to an illness where the cause can be determined or proved. Where cause is unknown or cannot be ascertained, no duty to prove the link exists. For certainly, the law cannot demand an impossibility.[59]

It is important to emphasize that these cases were not grounded on the presumption of compensability, which the Court had already held as abolished, but on the liberal interpretation of the laws in favor of the laborer, and the need to implement the social justice provision of the Constitution.

These rulings were also not without their dissents as well. Justice Melencio-Herrera, in particular, was vigorous in opposing the relaxation of the requirement of positive proof.[60]

In sum, the Supreme Court seemed to be of two minds during this period. In some cases, the Court would adhere strictly to the requirement mandated by the Labor Code—if there is no proof of the required work-connection, then the disease is not compensable. However, the Court also allowed the grant of some claims if the causes of the ailment were still unknown. In those cases, a presumption would arise that the working conditions increased the risk of contracting the ailment.

Justice Melencio-Herrera would eventually find vindication in *Raro v. ECC*. The Court, settling the matter once and for all, declared that the law, as it now stands, requires the claimant to prove a positive thing—that the illness was caused by employment and the risk of contracting the disease is increased by the working conditions. To say that since the proof is not available therefore the trust fund has the obligation to pay, is contrary to the legal requirement that proof must be adduced. The existence of otherwise nonexistent proof cannot be presumed.[61]

Later jurisprudence would clarify that *Raro* did not require that work causation or work-connection be proved by *direct evidence*. Instead:

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[59] *Id.* at 174.

[60] *See* Mitra v. ECC, G.R. No. 45846, 96 SCRA 284, 288–90, Feb. 21, 1980; Meñez v. ECC, G.R. No. 48488, 97 SCRA 87, 98–100, Apr. 25, 1980; Cristobal v. ECC [hereinafter "*Cristobal Decision*"], 97 SCRA 473, 482, Apr. 30, 1980; Santiago v. ECC, G.R. No. 47405, 100 SCRA 68, 72, Sept. 12, 1980; Leal v. ECC, G.R. No. 46545, 100 SCRA 637, 640, Oct. 30, 1980; Dator v. ECC, G.R. No. 57416, 111 SCRA 632, 636, Jan. 30, 1982; Duran v. ECC, G.R. No. 52363, 133 SCRA 389, 399, Mar. 30, 1982.

[61] *Raro*, 172 SCRA 845, 849.

> [W]hat the court in *Raro* required is that a claimant must submit such proof as would constitute a *reasonable basis* for concluding either that the conditions of employment of the claimant caused the ailment or that such working conditions had aggravated the risk of contracting that ailment. What kind and quantum of evidence would constitute an adequate basis for a reasonable man (not necessarily a medical scientist) to reach one or the other conclusion, can obviously be determined only on a case-to-case basis.[62]

It would be "sufficient that the hypothesis on which the workmen's claim is based is probable since probability, not certainty, is the touchstone."[63] In this regard, a physician's report is the best evidence of work connection of workmen's ailments and can be the basis of an award even if the physician was not presented as a witness.[64]

D. Revolt against *Raro*: Subsequent Jurisprudence

Needless to say, jurisprudence after *Raro* more or less adhered to the landmark ruling.[65] Despite this, a number of cases deviated from *Raro*, and at least one case referred back to the already abandoned ruling of *Nemaria* and previous cases.

In *Jacang v. ECC*,[66] the Court granted death benefits on account of a janitor and factory worker who died of Takayasu's disease, which was, at that time, not among the list of compensable diseases. Although the claimant failed to prove an increased risk as a result of the work—Takayasu's disease being of unknown origin—the Court nevertheless held for the claimant since Takayasu's disease was "scientifically linked" to pulmonary tuberculosis, which was a compensable disease.[67]

In *GSIS v. CA*, Abraham Cate, a police officer who had also earlier held positions in the armed forces, suffered from Osteoblastic Osteosarcoma.[68] He filed for disability benefits under EC, but this was denied

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[62] Sante v. ECC, G.R. No. 84415, 174 SCRA 557, 562, June 29, 1989. (Emphasis supplied.)

[63] Limbo v. ECC, G.R. No. 146891, 385 SCRA 466, 469, July 30, 2002.

[64] *Id.* at 470.

[65] Lorenzo v. GSIS, G.R. No. 188385, 706 SCRA 602, 624–30, Oct. 2, 2013 (Brion, *J.*, *concurring*).

[66] [Hereinafter "*Jacang*"], G.R. No. 151893, 473 SCRA 520, Oct. 20, 2005.

[67] *Id.* at 526–27.

[68] Osteosarcoma is a malignant tumor in which the cancerous cells produce osteoid matrix or mineralized bone. It is the most common primary malignant tumor of bone, exclusive of myeloma and lymphoma, and accounts for approximately 20% of primary bone

by the GSIS on the ground that it was not an occupational disease, and that there was no showing that his duties in the police and the military had increased his risk of contracting said ailment. This was affirmed by the ECC on appeal.

The CA, however, reversed this decision, and held that Cate was entitled to disability benefits. Curiously, the CA cited the dissenting opinions of Justices Sarmiento and Paras in *Raro* in justifying its decision. It wrote:

> Petitioners' failure to present positive evidence of a causal relation of the illness and his working conditions is due to the pure and simple lack of available proof to be offered in evidence. Verily, to deny compensation to osteosarcoma victims who will definitely be unable to produce a single piece of proof to that effect, is unrealistic, illogical and unfair. At the very least, on a very exceptional circumstance, the rule on compensability should be relaxed and be allowed to apply to such situations. To disallow the benefit will even more add up to the sufferings, this time, for the ignorance of the inability of mankind to discover the real truth about cancer.
>
> It is not the intention of this decision to challenge the wisdom of the Raro case. What is being hoped for is to have a second look on the issue of compensability of those inflicted with osteosarcoma or like disease, where the origin or cause is still virtually not ascertained. The protection of the stability and integrity of the State Insurance Fund against non-compensable claims, is much to be desired. Nonetheless, to allow the presumption of compensability to Osteosarcoma victims, will not adversely prejudice such state policy. In fact, it will give more meaning to the very purpose and essence of the State Insurance Fund. Upon the other hand, to deny the claim will not only defeat the very reason for its creation but will likewise turn down benefits to the intended rightful beneficiary thereof. As employee's compensation is based on social security principles. We believe that in the meantime that osteosarcoma's cause and origin are not yet unearthed, the benefit of the doubt should be resolved in favor of the claim.[69]

cancers. Andrew Horvai, *Bones, Joints, and Soft Tissues*, *in* ROBBINS & COTRAN PATHOLOGIC BASIS OF DISEASE 1198 (9th ed. 2014).

[69] *Cate*, 542 SCRA 367, 375–76.

The First Division of the Supreme Court[70] affirmed the decision of the Court of Appeals, and continued, saying that, "in the specific case of [Cate], the requirement is impossible to comply with, given the present state of scientific knowledge. The obligation to present such as an impossible evidence must, therefore, be deemed void," citing Article 1183 of the Civil Code.[71] To date, the ruling in *Cate* has not been reiterated in any subsequent case.

II. MAKING SENSE OF *RARO*

It is in the context narrated above that *Raro* was promulgated. Penned by Justice Hugo Gutierrez, Jr. and concurred in by 12 other justices, *Raro* settled the conflict between the two competing strands of jurisprudence. The decision in *Raro* was not rendered unanimously, however, as there were dissents from Justices Sarmiento[72] and Paras. This section provides a more substantive discussion of the case at issue.

A. Factual Antecedents

Zaida Raro first started work as a clerk at the Bureau of Mines and Geo-Sciences at its regional office in Camarines Norte on March 17, 1975. By her words, she was in perfect health at the start of her employment. Four years later, she started suffering from "severe and recurrent headaches coupled with blurring of vision." By that point, she had become a Mining Recorder at the Bureau.[73]

She sought medical help in Manila and was eventually diagnosed with a brain tumor. By that time, her memory, sense of time, vision, and reasoning power had been lost. Her husband filed a claim for disability benefits, but this was denied by the GSIS, and the ECC on appeal. Appealing her case before the Supreme Court, Raro argued that medical science could not yet have

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[70] An important caveat: only the Supreme Court *En Banc* can reverse or modify a doctrine or principle laid down by the Court. SC INT. RULES, Rule 2, § 3(i).

[71] *Cate,* 542 SCRA at 377 n.15.

[72] Justice Sarmiento would reiterate his dissent in at least one more case decided after *Raro*. Rodriguez v. ECC, G.R. No. 46454, 178 SCRA 30, 36, Sept. 28, 1989 (Sarmiento, *J.*, *dissenting*).

[73] The exact job description of Raro's employment can be found in Justice Paras' dissenting opinion: "As Mining Recorder II, to record and file mining instruments and documents in the Mining Recorder's Section and to type correspondence and other documents pertaining to the same action." *Raro*, 172 SCRA 845, 855 (Paras, *J.*, *dissenting*).

positively identified the causes of the various types of cancer, making the proof she would have to produce practically non-existent.[74]

B. The Ruling

In ruling against Raro, the Court relied on Section 1(b), Rule III of the Internal Rules and Regulations ("IRR"), which provides:

> For the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed under Annex "A" of these Rules with the conditions set therein satisfied, otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions.

Based on this provision, the Court held that:

> The law […] requires the claimant to prove a positive thing—that the illness was caused by employment and the risk of contracting the disease is increased by the working conditions. To say that since the proof is not available, therefore, the trust fund has the obligation to pay is contrary to the legal requirement that proof must be adduced. The existence of otherwise non-existent proof cannot be presumed.[75]

Workers would not be prejudiced by this new development, held the Court, because in any event, the poor employee is no longer arrayed against the might and power of his rich employer. Instead, the employee merely files his claim with a "neutral" ECC which would, on the basis of the supporting papers and medical evidence, determine whether compensation may be paid. "It is a government institution which protects the stability and integrity of the State Insurance Fund against the payment of non-compensable claims."[76]

In so doing, the Court, once and for all, eliminated the pockets of leniency established in jurisprudence that allowed claimants to receive benefits from the SIF even without adducing evidence in their favor.

This ruling was in the service of the new "social insurance" system adopted under the New Labor Code. All employers now pay regular contributions for the maintenance of the fund, and from which claims will be paid out. The Court held that "the actuarially determined number of workers

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[74] *Id.* at 847.
[75] *Id.* at 849.
[76] *Id.* at 852.

who would probably file claims within any given year is important in insuring the stability of the trust fund and making certain that the system can pay benefits when due to all who are entitled and in the increased amounts fixed by law."[77]

The Court, disavowing any actuarial expertise, adopted a conservative stance, and held that there is a need "*to show a greater concern for the trust fund*" to which the tens of millions of workers and their families look for compensation whenever covered accidents, diseases, and deaths occur. This line of reasoning was used in denying Raro's claim, and establishing the stricter rule of positive proof for every claim. But as will be discussed in the next succeeding sections, this rationale flies in the face of the very purpose for which EC was created.

C. The Dissents

Justices Sarmiento and Paras registered dissents in this case. Justice Sarmiento maintained that the Labor Code did not actually intend to abolish the "presumption of compensability," especially since the Labor Code, as a social legislation, is fundamentally a measure intended to afford protection unto the working class.

Although agreeing with the majority in taking into account "the tens of millions of workers and their families [who] look for compensation whenever covered accidents, diseases, and deaths occur," Sarmiento said that a contrary ruling to *Raro* would not have substantially dissipated the SIF, not to mention the fact that Raro herself was a victim.[78]

Justice Paras, for his part, contended that the ruling in *Mercado* and *Nemaria,* where if the cause is unknown or cannot be ascertained, no duty to prove the link exists, remained good law. Whether Raro's work, which required mental concentration at times, was specifically causative of brain tumor was still unknown, but Paras argued that "doubts must generally be resolved in favor [of claimants] whenever compensation for disease is concerned."[79]

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[77] *Id.*

[78] *Id.* at 853–54 (Sarmiento, *J.*, *dissenting*).

[79] *Id.* at 854–57 (Paras, *J.*, *dissenting*).

III. A *NEUTRAL* ECC? SOCIAL INSURANCE AND POLICY GOALS

An analysis of the Court's ruling requires a deeper dive into the nature of social insurance, the framework that underpins EC. Under the law, all employers contribute to the SIF based on a schedule set by the ECC, according to the monthly salary credit of their employees. For government employees, the government pays PHP 100 per month for each employee. In the private sector, the monthly contribution is based on the employee's monthly salary credit, and since 2006,[80] has been as follows:

Table 1. Private Sector Contributions to the SIF		
Range of compensation	Monthly Salary Credit	Monthly Contribution
PHP 900 – PHP 14,749	PHP 1,000 – PHP 14,500	PHP 10
PHP 14,750	PHP 15,000 above	PHP 30

In short, the life of the fund depends on the contributions that it receives, and the amount of benefits that it pays out in any given year. While the ECC is *nominally* neutral, the incentives it faces compel it to act more conservatively, arguably contravening the policy goals set out in its charter. The Court itself conceded this in *Raro*—instead of being arrayed against their employer, the claimant would have to go against the "tens of millions of workers and their families [who look to the SIF for compensation] whenever covered accidents, diseases, and deaths occur."[81]

As the administrators of the fund, the Social Security System (SSS), GSIS, and ECC are bound by a fiduciary duty to ensure that the SIF is not exhausted.[82] In this regard, it has the same responsibility as all other social insurance funds. The fiduciary duty to maintain solvency is a powerful incentive for administrators *not* to pay out benefits. It is an observable phenomenon seen in social insurance funds all over the world:

> Pressures for government restraint, especially to reduce the deficit, are also exerting a powerful influence on systems like workers' compensation. Deficits can be reduced only by some combination of tax increases or expenditure reductions. Tax increases will be resisted stringently, especially with respect to payroll taxes, which

[80] ECC Bd. Res. No. 06-08-70 (2006).

[81] *Raro*, 172 SCRA 845, 852.

[82] Fiduciaries are charged with the twin duties of care and loyalty. AUGUST J. BAKER, DENNIS E. LOGUE & JACK S. RADER, MANAGING PENSION AND RETIREMENT PLANS: A GUIDE FOR EMPLOYERS, ADMINISTRATORS, AND OTHER FIDUCIARIES 27 (2005).

> have increased dramatically in recent years and are often regarded as 'killers of jobs' since they initially add to labour costs. That leaves expenditure restraint as the only mechanism. Pressure for expenditure restraint and cost containment is occurring at all phases of the system: health and safety measures and accident prevention to reduce the numbers and severity of the cases coming into the system; vocational and medical rehabilitation, and reasonable accommodation requirements, to facilitate the return to work of injured workers; reductions in indexing and in the magnitude of the benefit payouts; and enhanced efforts to reduce abuses of the system and to increase efficiency in the delivery of services.[83]

This phenomenon is not unique to EC, but is also observable in other government programs structured along insurance lines like the Philippine Health Insurance Fund ("PhilHealth").[84]

The liberal policy articulated in the law would now have to contend with the real pressure to extend the actuarial life of the fund. Managing an insurance fund is especially daunting when black swan events[85] occur, greatly increasing the incidence of diseases or injuries, which in turn increases payouts from the fund. One need not look further than the current COVID-19 pandemic, which, due to the ECC's classification of the virus as compensable, led to a substantial amount of benefits being paid out in 2020.[86] Thus, the fund tends toward capital accumulation, if only to ensure its financial survival. But, as a result, even legitimate claims may be rejected in the name of fiscal prudence.

This incentive guides the policy direction of the ECC. While it is true that the ECC only implements the law in determining the compensability of claims, the ECC has discretion in determining what constitutes a compensable

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[83] Morley Gunderson, *Worker's Compensation in the New World of Work, in* WORKERS' COMPENSATION: FOUNDATIONS FOR REFORM 36 (Morley Gunderson and Douglas Hyatt eds., 2000).

[84] MANUEL M. DAYRIT ET AL., PHILIPPINES HEALTH SYSTEM REVIEW 85–86 (2018).

[85] A black swan event has the following characteristics: (a) rare, high-profile, hard-to-predict, events that have an outsized impact and are beyond the realm of normal expectations; (b) events whose probabilities are so small that they are difficult to compute; and (c) events and their causality that we tend to explain after the event. Pramod Kumar Mishra, *COVID-19, Black Swan events and the future of disaster risk management in India*, 8 PROGRESS IN DISASTER SCIENCE 1, 3 (2020).

[86] Gillian Cortez, *ECC Sees Compensation Fund Replenished in 2021 after Heavy COVID Claims*, BUSINESS WORLD, Jan. 17, 2021, *at* https://www.bworldonline.com/economy/2021/01/17/339412/ecc-sees-compensation-fund-replenished-in-2021-after-heavy-covid-claims/.

claim in the first place. Occupational diseases are properly defined by the ECC, which issues a list of what may be considered compensable.[87] Moreover, with regard to diseases not defined as occupational under the ECC rules, it is the SSS or GSIS administrators, and the ECC on appeal, that determine the sufficiency of the claim. Granted, the decisions of these agencies may be reviewed by the courts for grave abuse of discretion, but it remains the rule that findings of fact of administrative bodies who have acquired expertise on account of their specialized jurisdiction are accorded by the courts not only respect but also, most often, finality.[88]

The social insurance scheme may be even more inflexible than the adversarial process that preceded it, because the SIF cannot recoup losses from the claims that it approves beyond what it is statutorily set to receive from employers' contributions, unlike the old system, where employers under this can simply "recover the compensation he paid to the injured worker by an increase of prices or charges for the commodities sold or services rendered. The consuming public is, therefore, the one to whom the liability is ultimately imposed."[89]

The data bears out some findings that affirm the conservative nature of the fund.[90] There was a steep rise in the number of claims in the private sector in 2008, but this number has remained steady ever since. Meanwhile, claims among government employees have seen no growth during the same period, as shown in Chart 2. In 2007, as contributions increased due to an update in the private sector contributions schedule, the total value of claims paid out remained at the same level, and even declined for some time after peaking in 2002, as shown in Chart 1. As of March 31, 2022, the SIF had a cushion of 42.82 billion pesos in reserves, which was enough to pay out all of the benefits payments in 2021 more than 15 times over.[91]

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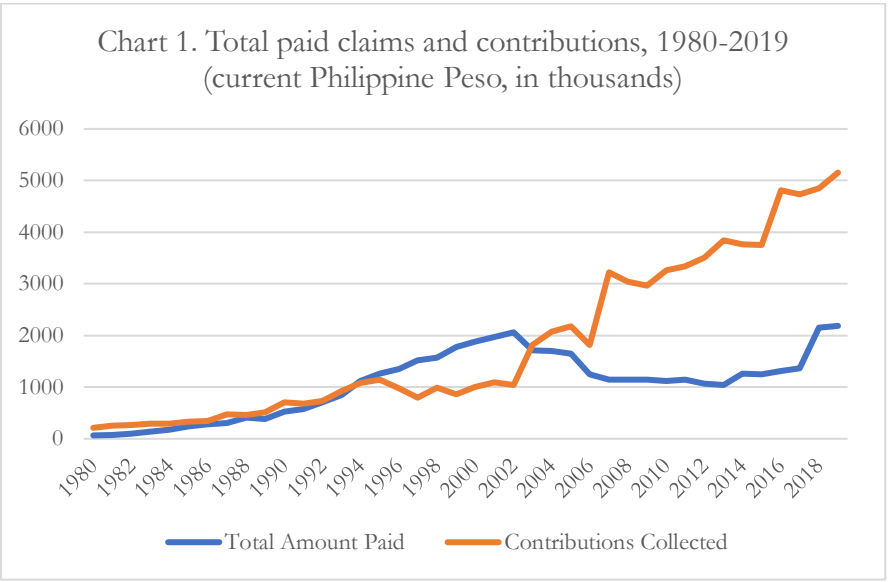
[87] LAB. CODE, art. 173(*l*).

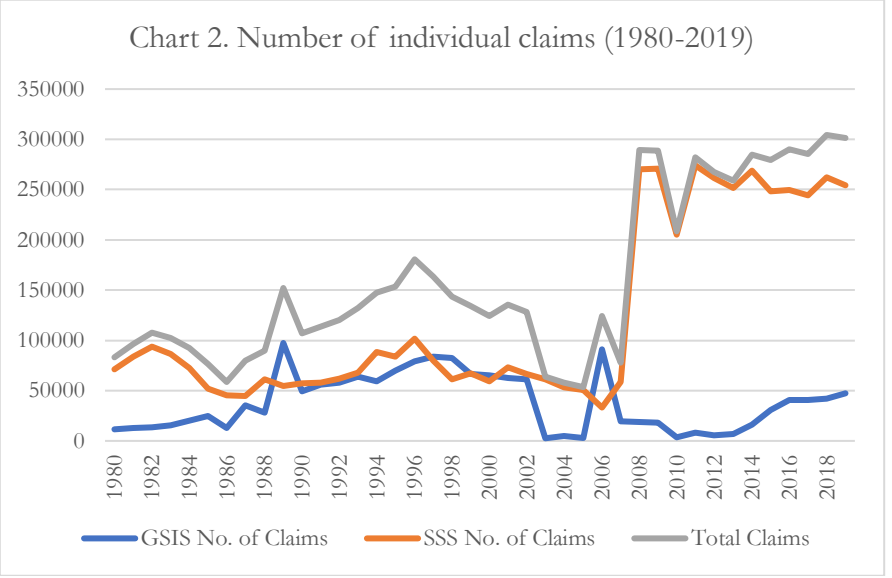
[88] Aquino v. Social Security System, G.R. No. 149256, 496 SCRA 200, 205, July 21, 2006.

[89] Moises San Agustin, *The Philippine Workmen's Compensation Act*, 9 PHIL. L.J. 167–68 (1929).

[90] EMPLOYEES' COMPENSATION COMMISSION, FINANCIAL STATUS OF THE STATE INSURANCE FUND AS OF DECEMBER 31, 2019 (2019), *at* https://ecc.gov.ph/wp-content/uploads/2020/06/SIF-Report-as-of-December-31-2019-final.pdf; EMPLOYEES' COMPENSATION COMMISSION, NUMBER OF EC CLAIMS, AMOUNT PAID AND CONTRIBUTIONS COLLECTED (2019), *at* https://ecc.gov.ph/wp-content/uploads/2019/04/Number-of-EC-Claims-amount-and-contribution-Collected-GSIS-SSS-1975-2018.pdf.

[91] EMPLOYEES' COMPENSATION COMMISSION, FINANCIAL STATUS OF THE STATE INSURANCE FUND AS OF DECEMBER 31, 2022, at 1 (2022).





The fact that claims have hardly seen any growth in recent times may be attributable to many factors: the improved safety of work environments leading to fewer incidences of injuries, deaths, and diseases;[92] a decline in the

[92] *See* Jinky Leilanie Lu, *Statistics on Trends of Occupational Injury and Related Injuries in the Philippines*, *in* 55 ACTA MEDICA PHILIPPINA 604, 606 (2021). Occupational diseases decreased 40.7% from 171,787 cases in 2011 to 101,851 in 2017. Occupational accidents decreased 18%

salience of SIF benefits among workers; and the ECC definition of compensable diseases no longer matching current workplace trends, just to name a few.

But it cannot also be discounted that another possible reason for the low level of claims is high claim-denial rates that discourage claimants from pursuing claims in the future[93]—the underlying reason being that:

> [A]n individual contemplating filing a workers compensation claim is making a cost-benefit analysis and files if the benefits of doing so outweigh the costs. A higher probability of denial lowers the expected benefit of filing a claim, because a denied claimant receives only a fraction or none of the benefits requested or, if the denial is successfully contested, incurs legal costs and considerable delay in receiving benefits.[94]

The time cost of pursuing a claim can prove particularly prohibitive. For example, between Zaida Raro's first claim for disability benefits with the GSIS in January 1980 and the Supreme Court's decision in April 1989, Raro had to wait more than nine years only to find her claim finally resolved against her favor. Indeed, such incidents contravene the very purpose for which the program was created—in order that "employees and their dependents, in the event of work-connected disability or death, may *promptly secure adequate income benefit and medical related benefits*."[95] A public perception of the program as being overly stringent with regard to claims would lead to claimants losing confidence in workers' compensation, and refraining from filing claims in the future.

This is the reason why there is an urgent need to reexamine the ruling in *Raro*. The Court in *Raro* viewed Raro's claim as "a disease not intended by the law to be compensated," which, if "inadvertently or recklessly included," would endanger the integrity of the SIF.[96] A liberality in the granting of claims, it is argued, would result in the financial ruin of the fund, since it would open

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from 46,655 cases in 2011 to 38,235 cases in 2017. Occupational injuries decreased 5.4% from 48,975 in 2011 to 46,283 in 2017. But it should be noted that (1) Philippine Statistics Authority data is based on self-reporting from firms; (2) these surveys only cover firms that employ 20 workers or more; and (3) the definition of occupational diseases and injuries may differ from the diseases and injuries compensable under ECC rules.

[93] Jeff Biddle, *Do High Claim-Denial Rates Discourage Claiming? Evidence from Workers' Compensation Insurance,* 68 J. RISK & INS. 631 (2001).

[94] *Id.* at 654.

[95] LAB. CODE, art. 172. (Emphasis supplied.)

[96] *Raro*, 172 SCRA 845, 852.

the floodgates to all sorts of claims not intended to be legitimate under the law. But this fear may, in fact, be unfounded.

First, as a matter of law, the Labor Code itself already mandates that "all doubts in the implementation and interpretation of the provisions of this Code […] shall be resolved *in favor of labor*."[97] The reasoning that there is a need to show "a greater concern for the trust fund which tens of millions of workers and their families look for compensation" is circular, when in the first place, the workers and their families are precisely excluded from relying on the SIF by virtue of a fact beyond their control. It should be stated that the trust fund is not an end in itself, but merely a tool for the implementation of stated policy objectives, so the concern for the trust fund must always be in the context of the overriding goal of providing adequate benefits to employees. As observed by the Court:

> The Court of Appeals feels and stresses that it is the duty of the State to protect the State Insurance Fund for the benefit of the employees in whose favor the fund was created. The petitioner's deceased husband was one such employee. It is for workers like him and their dependents that the fund exists. Once the widow has shown that her claim has basis, however, it would be cruel irony for respondents to deny her the benefits on the trite excuse that the fund has to be protected. *Strict protection in a borderline case might only defeat the purpose of the law aimed at social justice.*[98]

Second, and more importantly, the risk to the SIF is overstated. The liberal rule abolished by *Raro* only contemplates "borderline cases," which the ECC itself has in fact recognized in one of its early issuances.[99] Such policies have been "to extend the applicability of the decree to a greater number of employees who can avail of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection to labor."[100]

In point of fact, there was no basis for the Court beyond mere speculation to say that the SIF would be endangered by the granting of Raro's

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[97] LAB. CODE, art. 4. (Emphasis supplied.)

[98] *Jacang*, 473 SCRA 520, 531–32. (Emphasis supplied.)

[99] ECC Res. No. 223 (1977), *cited in* Sepulveda v. ECC, G.R. No. 46290, 84 SCRA 770, 772, Aug. 25, 1978; Delos Angeles v. GSIS, G.R. No. 47099, 94 SCRA 308, 314, Nov. 16, 1979; *Cristobal Decision,* 97 SCRA 473, 478–79; Acosta v. ECC [hereinafter "*Acosta*"], G.R. No. 55464, 109 SCRA 209, 219, Nov. 12, 1981; San Valentin v. ECC, G.R. No. 56909, 118 SCRA 160, 163, Nov. 2, 1982; *Panotes*, 138 SCRA 595, 602–03.

[100] *Acosta*, 109 SCRA at 216.

claim. That the Court expressly disavowed actuarial knowledge[101] should have led them to refrain from passing judgment based on considerations of financial viability.

Moreover, in contrast to the declarations of the Court to the effect that the presumption of compensability is incompatible with the present system, the ECC itself has revived the presumption albeit in a limited sense.[102] Under current ECC regulations, when members of the Armed Forces of the Philippines (AFP) suffer a contingency, a presumption arises that it was because of the nature of the work.[103] This reflects the observation that "members of the AFP have become 'marked men' insofar as insurgents and other lawless elements are concerned and are, therefore, killed by such insurgents at every opportunity."[104] Presumptions are thus within the province of the ECC to grant, and such leniencies are not so abhorred by EC.

Lastly, the SIF enjoys the safety of a government guarantee. The Philippine government accepts the general responsibility for the solvency of SIF, and is bound to supplement deficiencies through appropriations from the national budget.[105] Government guarantees are often criticized for creating a moral hazard, since fund administrators can afford to be more risky with its management of the SIF, knowing that the government will cover any losses. However, in the same vein, the government guarantee allows the ECC to prioritize the fulfillment of its policy goals over financial considerations.

These all point to the continuing need for EC not to adjudge claims on the basis of the financial viability of the SIF, but on the actual needs of claimants. *Raro* gives the opposite impression, and sets a dangerous precedent in the implementation of the social welfare programs of the government.

IV. TO REQUIRE THE IMPOSSIBLE: RESTATING *NEMARIA*

An inflexible assessment of EC claims is not only imprudent because of its exclusionary effect, as discussed above, but also impractical from a medical standpoint. The horizon of medical knowledge is always expanding, as science continues to learn more about the human body, and the way it

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[101] *Raro*, 172 SCRA 845, 852.
[102] Azucena, *supra* note 19, at 522.
[103] ECC Res. No. 3906 (1988), ¶ 3.
[104] ¶ 1.
[105] LAB. CODE, art. 184.

interacts with its environment. But there remain pockets of the human experience that science has yet to shine a light on.

One such pocket is the determination of *occupational* diseases, or those with a connection to one's work. The difficulty in determining which diseases are work-connected is increased with the change in the nature and conditions of work, the work patterns and behaviors of individuals, and the technologies we use to perform our work.[106] Whereas in the advent of industrial society, occupational diseases were fairly obvious—inhalation of particulate matter, say, coal dust from coal mines, would self-evidently lead to some complications in the lungs.[107] But in the 21st century, the effects of a white-collar, sedentary lifestyle on the human body may be so subtle that occupational diseases may no longer be limited to *physiological* diseases, but may even extend to *psychological* ones.[108]

The point is that evidence of a work-connection may be absolutely unavailing, even though the plausibility of such connection is great. This is especially true for cancers because exposure to carcinogens (cancer-inducing agents) from work remains a distinct possibility.[109] Even sedentary work has been shown to increase the risk of certain types of cancers.[110] Moreover, chronic stresses such as racism and poverty also play a part in the development of certain cancers, such as breast cancer.[111] Some studies have already called for a revision of workman's compensation rules to account for these new insights into work-initiated cancers.[112]

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[106] Gunderson, *supra* note 84, at 30–33.

[107] Angela Nelson, *What is Black Lung Disease?*, WEBMD, Oct. 7, 2020, *at* https://www.webmd.com/lung/black-lung-disease.

[108] M. Henderson et al., *Work and Common Psychiatric Disorders*, 104 J. ROYAL SOC'Y MED. 198 (2011). *See* Ruby Rosselle L. Tugade, *Understanding Insanity: Making Sense out of Mental Illness in Philippines Law and Jurisprudence,* 90 PHIL. L.J. 859, 878–81 (2017) for an examination of the treatment of mental illness in Employees' Compensation cases for work-related injuries.

[109] Xinxin Li et al., *Epidemiological Characteristics of Occupational Cancers Reported – China, 2006-2020*, *in* 4 CHINA CDC WEEKLY 370 (2020).

[110] Anna Johnsson et al., *Occupational Sedentariness and Breast Cancer Risk*, *in* 56 ACTA ONCOLOGICA 75 (2017).

[111] "[A]t the global level, notable differences in breast cancer mortality is [sic] observed among ethnic groups including younger age of onset. These race-related disparities are likely driven by a complex interplay among sociocultural differences in societal-level (e.g., racism), neighborhood-level (e.g., pollution), and institutional-level (e.g., access to care) determinants of health." M. Al Abo et al., *Adaptive Stress Response Genes Associated with Breast Cancer Subtypes and Survival Outcomes Reveal Race-related Differences*, 8 NPJ BREAST CANCER 73, 74 (2022).

[112] S. Milham, *Most Cancer in Firefighters is Due to Radio-frequency Radiation Exposure not Inhaled Carcinogens*, 73 MEDICAL HYPOTHESES 788, 789 (2009).

Researchers are now revealing the causes and origins of cancers where no such information could be uncovered before. Certainly, the risk of cancer could have very well been increased in the case of Abraham Cate, who did "dirty jobs" as a rifleman in the Philippine Navy,[113] and subsequently suffered from osteosarcoma. The same could be said for Zaida Raro, whose exposure to the mining industry could have increased her risk of developing a brain tumor. But under *Raro,* this would not be sufficient to entitle workers to benefits. In effect, *Raro* would require claimants to perform an impossibility.

Lex non intendit aliquid impossibile. The law does not require the impossible. In this regard, Article 1183 of the Civil Code provides that "impossible conditions […] shall annul the obligation which depends on them." Meanwhile, Articles 727 and 873 provide that impossible conditions imposed on donations and testamentary dispositions shall be "considered as not imposed." In this regard, there is a discrepancy in the Court's pronouncements. Pre-*Raro,* jurisprudence would have the condition be deemed just not to have been imposed, similar in effect to Articles 727 and 873 of the Civil Code, on simple or remuneratory donations and testamentary dispositions, respectively.[114] In *Cate*, however, the Court referred to Article 1183.[115] Although its effect is the same, it is the opinion of the author that EC should be considered a form of donation, albeit a unique one, and that Article 727 should be the operative provision. This is because EC benefits are one form of wealth held by private individuals that originate from government largess.[116] This government-created wealth is distinguished from traditional forms of wealth in that this "new" property is "allocated by government on its own terms, and held by recipients subject to conditions which express 'the public interest.'"[117] Since EC benefits are, in some sense, dependent on the beneficence of the state, it would make sense to consider EC benefits "gratuitous" in the same sense as donations are defined in the Civil Code.

Having established the effect of requiring an impossible condition, the rule established by the Court in *Nemaria* bears repeating:

> Thus the requirement that the disease was caused or aggravated by the employment or work applies only to an illness where the cause can be determined or proved. Where cause is unknown or cannot

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[113] *Cate*, 542 SCRA 367, 373.

[114] *See*, *e.g.*, *Nemaria*, 155 SCRA 166, 174.

[115] *Cate*, 542 SCRA at 377 n.15.

[116] This concept is discussed extensively in Charles A. Reich, *The New Property*, 73 YALE L.J. 733 (1964).

[117] *Id.* at 733.

> be ascertained, no duty to prove the link exists. For certainly, the law cannot demand an impossibility.[118]

Otherwise stated, while the general rule is that a disease may only be compensable when the claimant proves that the risk of contracting the same is increased by working conditions,[119] an exception arises when no such proof exists, *but such work-connection is plausible according to the science available at present*. These contemplate scenarios where current research has not definitively established the exact causes for such disease, but such causal hypothesis remains valid. In such a case, the employee may still be entitled to benefits despite the non-presentment of the required evidence. As Justice Paras quotes in his dissent, "one should not expect ordinary persons to prove the real cause of the ailment of the deceased when the experts themselves are still in the dark."[120]

Further complicating things, as discussed above,[121] the Court has already weakened the rule in *Raro* by only requiring a "reasonable basis" between the disease and the work of the employee, instead of direct evidence. This essentially hollows out the doctrine in *Raro*, and brings the situation back to the bifurcated state of jurisprudence previous to *Raro*. For purposes of clarity, it would be well for the Court to rule in favor of a liberal interpretation of the Labor Code.

V. CONCLUSION: GIVING EFFECT TO EMPLOYEES' COMPENSATION

Employees' compensation remains a valuable tool in ensuring that an injury or disease does not spell disaster for a worker and their family. That the state has chosen to structure its compensation model along social insurance principles brings with it some advantages, but it also has some disadvantages. It would be well for the Supreme Court to be cognizant of the incentives faced by the administrators of the SIF. Jurisprudence cannot be blind to its policy implications, no matter how much it is claimed that courts do not legislate.

A new attitude towards EC is required. At present, there is a burgeoning movement to apply another concept from a different field of law

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[118] *Nemaria*, 155 SCRA at 174.
[119] LAB. CODE, art. 173(*l*).
[120] *Raro*, 172 SCRA 845, 856 (Paras, *J., dissenting*).
[121] *See supra* Part I.C.

to public health ethics.[122] The precautionary principle, a staple of international environmental law, provides that "when an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause-and-effect relationships are not fully established scientifically."[123]

What does this entail in EC claims assessment? One change could be as follows:

> Precautionary changes to the use of causal criteria could also involve weakening the "rules of evidence" accompanying them. This approach presumes that the evidentiary rules-of-thumb for the causal criteria are specific enough (clear enough) that "weakening" them makes sense. Two criteria, consistency and strength, offer opportunities for such changes. If, for example, we agreed that consistency was established when at least half of the published epidemiological studies revealed a statistically significant elevated risk, a precautionary adjustment would be to lower this percentage to 40%, or some other value. […] Similarly, if a summary relative risk of 2.0 is considered the threshold for inferring that the association has met the "criterion" of strength of association, then we could reduce that requirement to some smaller number greater than one, e.g. 1.5.[124]

In the same manner, where there is a plausible connection between the disease contracted by the worker and their work, then EC must provide relief for the ailing person, even if the particular causative relationship has not yet been established with certainty. In this way, workers may be able to seek immediate treatment for their affliction and arrest the further degradation of their condition. Families whose breadwinners may have perished as a result of occupational diseases need not be in such a precarious situation after the loss of a source of income. Employers need not suffer productivity losses from their employees' work-induced sicknesses. It is in the interest of all that EC be generous to those afflicted by illness. Although the threat of fraud is always present, it would be infinitely preferable that EC be broad enough that

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[122] *See, e.g.*, Douglas L. Weed, *Precaution, Prevention, and Public Health Ethics*, 29 J. MED. & PHILO. 313 (2004); Bernard D. Goldstein, *The Precautionary Principle Also Applies to Public Health Actions*, 91 AM. J. PUB. HEALTH 1358 (2001).

[123] Weed, *supra* note 123, at 315.

[124] *Id.* at 322–23.

it includes the undeserving, instead of being too narrow that it excludes even qualified beneficiaries.[125]

Raro presents a significant obstacle to the attainment of the policy objectives of EC. A fully functioning employees' compensation program requires that it should be accessible by as much of the labor force as is possible. Otherwise, the program would be for naught. If justice is to be had, then the Court must hold firm to the "constitutional commitment that those who have less in life should have more in law."[126]

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[125] Inclusion errors are generally preferable to exclusion errors since the former only represent an error in calibrating the policy apparatus, while the latter represent a failure of the policy apparatus to achieve its stated goals.

[126] *Mercado*, 127 SCRA 664, 671.