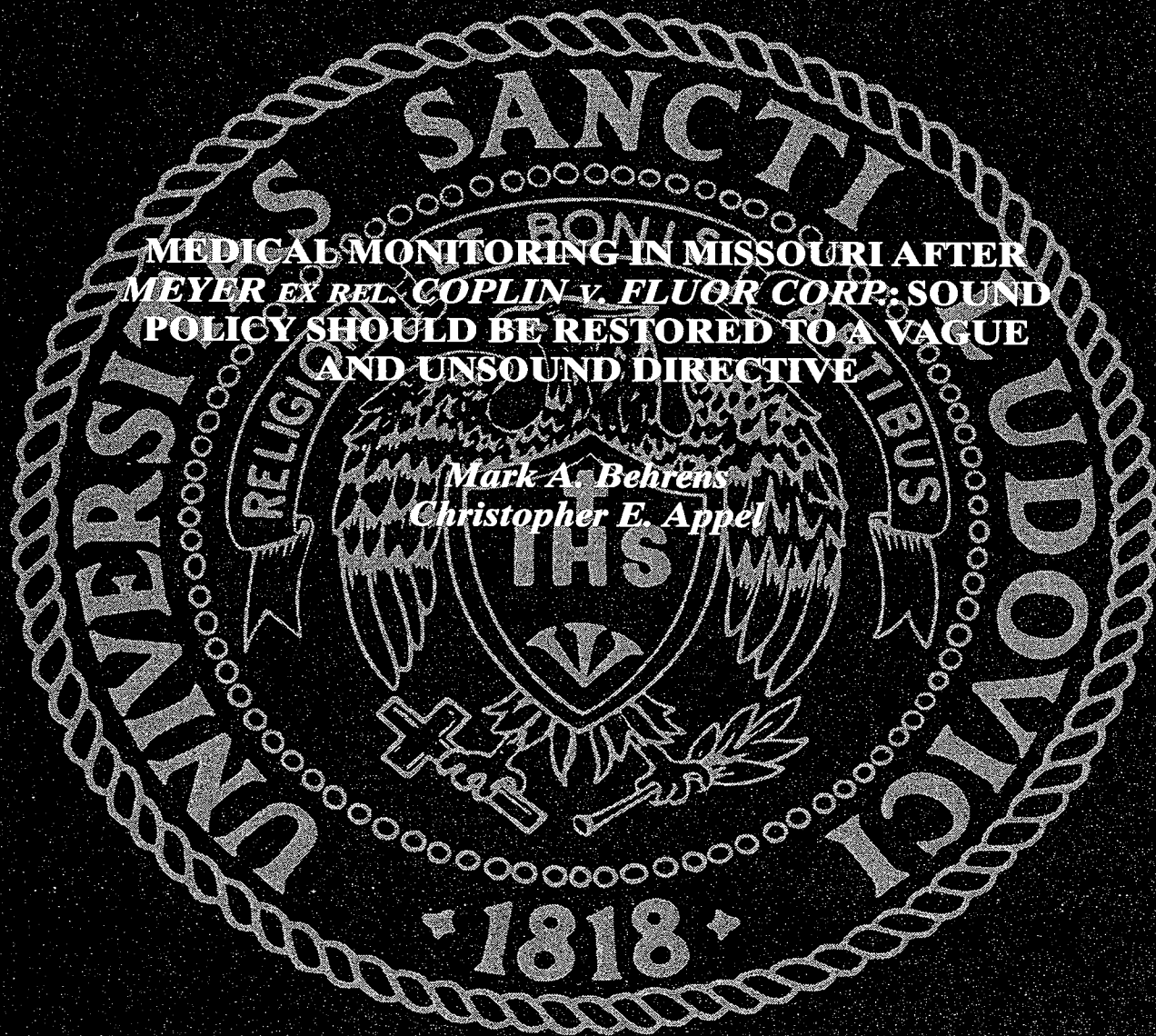

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**MEDICAL MONITORING IN MISSOURI AFTER
MEYER *EX REL. COPLIN* v. *FLUOR CORP.*: SOUND
POLICY SHOULD BE RESTORED TO A VAGUE
AND UNSOUND DIRECTIVE**

*Mark A. Behrens
Christopher E. Appel*



**MEDICAL MONITORING IN MISSOURI AFTER *MEYER ex rel.*
COPLIN v. FLUOR CORP.: SOUND POLICY SHOULD BE RESTORED
TO A VAGUE AND UNSOUND DIRECTIVE**

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INTRODUCTION

Historically, the Missouri Nonpartisan Court Plan has been a national model for selecting a judiciary that is not only independent but also fair and balanced.¹ A recent decision from the Missouri Supreme Court, however, may cause some to question whether that balance is at risk of being lost in the area of tort law.²

In *Meyer ex rel. Coplin v. Fluor Corp.*,³ the Missouri Supreme Court held that plaintiffs with no present physical injury may recover medical monitoring as an item of compensable damages when liability is established under a traditional tort law theory of recovery. Medical monitoring claims seek to recover the anticipated costs of long-term diagnostic testing to detect the onset

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1. See generally Mark A. Behrens & Cary Silverman, *The Case for Adopting Appointive Judicial Selection Systems for State Court Judges*, 11 CORNELL J.L. & PUB. POL'Y 273 (2002) (promoting appointive judicial selection systems over state judicial elections).

2. See Donna Walter, *Group Releases 'Judicial Hellholes' Report for 2007*, DAILY REC. (KANSAS CITY, MO.), Dec. 19, 2007, available at 2007 WLNR 25185325 (reporting that the Missouri Supreme Court received a "dishonorable mention" by the American Tort Reform Foundation in its 2007 list of judicial "hellholes").

3. *Meyer ex rel. Coplin v. Fluor Corp.*, 220 S.W.3d 712 (Mo. 2007).

of disease from exposure to a toxic substance.⁴ The *Meyer* court also held that the potential harmful exposure at issue, namely, lead emitted from defendant's smelting plant—because it came from a single source—was enough to satisfy the requirements for class certification under Missouri law.⁵ *Meyer* has been listed by one of the nation's foremost plaintiffs' class action attorneys as one of the "top ten" decisions of 2006-2007.⁶

This Comment will discuss the *Meyer* opinion in detail and provide suggestions for lower courts that may be faced with answering the many questions raised by the court's vague directive. If serious problems emerge with respect to the Missouri Supreme Court's approach, not only will the court's historically solid reputation suffer, but the "Missouri Plan" itself may come under greater attack.⁷

I. MEYER EX REL. COPLIN V. FLUOR CORP.

A. The Meyer Opinion

Meyer involved a medical monitoring class action filed by over 200 children allegedly exposed to lead released into the environment by defendant's smelter.⁸ Plaintiffs sought compensatory damages to establish a medical monitoring program to obtain ongoing diagnostic testing to determine

4. *Id.* at 716.

5. *Id.* at 719.

6. Elizabeth J. Cabraser, *Top Ten Class Action Decisions of 2006-2007*, in *Civil Practice and Litigation Techniques in Federal and State Courts* (ALI-ABA Course of Study July 11-13, 2007).

7. For recent articles discussing a broader debate that is occurring over the Missouri Plan, see, e.g., Amanda Bronstad, *State's Judicial Nomination Process Threatened*, NAT'L L.J., Aug. 20, 2007, at 6; *Former Missouri Supreme Court Justices Defend Court Plan*, KAN. CITY STAR, Aug. 14, 2007, at D11, available at 2007 WLNR 15670101; Bill Graham, *Commentary, Missouri Judiciary Is at Stake*, KAN. CITY STAR, Aug. 15, 2007, at 2, available at 2007 WLNR 15753211; Scott Lauck *et al.*, *And Then There Were 3: Supreme Court Selections Spark New Attacks on Non-Partisan Plan*, MO. LAW. WKLY., July 30, 2007, at 1, available at 2007 WLNR 14696317; Scott Lauck, *Best-Laid Plan*, MO. LAW. WKLY., Sept. 3, 2007, at 1, available at 2007 WLNR 17301307; Bill McLellan, *Editorial, Nonpartisan Court Plan May Not Be So Nonpartisan*, ST. LOUIS POST-DISPATCH, July 27, 2007, at C1, available at 2007 WLNR 14429233; Laura Denver Stith, *Address at the Missouri Bar and the Judicial Conference of Missouri Annual Meeting* (Sept. 27, 2007), in MO. LAW. WKLY., Oct. 1, 2007, at 8-9, available at 2007 WLNR 22561813; Kelly Wiese, *Missouri Court Plan Reform Sought for '08 Ballot*, DAILY REC. (KANSAS CITY, MO.), Nov. 13, 2007, at 1, available at 2007 WLNR 22561313; Virginia Young, *Chief Justice Defends Missouri's Judge Selection Process*, ST. LOUIS POST-DISPATCH, Sept. 12, 2007, at C4, available at 2007 WLNR 17810551.

8. *Meyer*, 220 S.W.3d at 714.

