WORKMEN'S COMPENSATION—SUICIDE—DEPENDENT'S RIGHT OF RECOVERY—*Schwab v. Department of Labor and Industries of the State of Washington*, 76 W.D.2d 852, 459 P.2d 1 (Wash. Sup. Ct. 9/25/69).

At early common law, suicide was a felonious act punishable by forfeiture of all personalty to the Crown and burial under the highway.[1] In the United States, jurisdictions are split as to the criminal propensities of the act and, for obvious reasons, the doctrines applied are primarily limited to attempt and accessory violations. This note, however, will attempt to explore the civil grounds for the compensation of dependents who seek to relate their misfortune to the employment of their deceased under State Workmen's Compensation Statutes.

On May 24, 1956, decedent-workman injured his back in an industrial accident. Although the injury was severe enough to require surgery, the condition had improved to the point where the workman was able to resume full-time work to the satisfaction of a new employer. Three years after the accident, decedent, somewhat inebriated, ingested an overdose of sleeping pills which led to his demise. The widow made a claim under the Washington Workmen's Compensation Act,[2] contending that the suicide was a direct result of the compensable back injury, thus entitling her to dependency benefits. Despite evidence that decedent suffered from alcoholism and mental instability and that he had attempted suicide as often as six times, all prior to his industrial injury, the Supreme Court of Washington, in an unanimous opinion, affirmed a jury verdict allowing benefits to the widow for a compensable death.[3]

The concept of a compensable suicide under state statutes is not new to American courts. Most courts have aligned with a majority or minority rule in establishing factors necessary to entitle a dependent to statutory death benefits.[4] Perhaps the most important factor precluding compensability is an express statutory provision in forty-three states, allowing no compensation benefits where the injury or death was intentionally caused.[5]

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1 12 ENCYCLOPAEDIA OF THE LAWS OF ENGLAND 18 (A. Wood Renton, ed. 1898).

2 WASH. REV. CODE ANN. 51.04 *et seq.* (as amended 7/1/61).

3 Schwab v. Department of Labor and Industries of the State of Washington, 76 W.D.2d 952, 459 P.2d 1 (Sup. Ct. 1969).

4 These rules will be discussed below.

5 Connecticut, Illinois, Michigan, Montana, Nebraska, New Hampshire, and Wyoming statutes do not specifically exclude intentional injury or suicide. *See* Annot., 15 A.L.R.3d 616 (1967).

The predominant American rule is enunciated in the case of *In re Sponatski*.[6] In this case, a workman threw himself out of a hospital window less than a month after he sustained a very painful eye injury.[7] Following a Massachusetts tort case,[8] the court held:

> [W]here there follows as the direct result of a physical injury an insanity of such violence as to cause the victim to take his own life through an uncontrollable impulse or in a delirium of frenzy 'without conscious volition to produce death, having knowledge of the physical consequences of the act,' then there is a direct and unbroken causal connection between the physical injury and the death. But where the resulting insanity is such as to cause suicide through a voluntary willful choice determined by a moderately intelligent mental power which knows the purpose and the physical effect of the suicidal act even though choice is dominated and ruled by a disordered mind, then there is a new and independent agency which breaks the chain of causation arising from the injury.[9]

A strict interpretation of *Sponatski* removes, in theory, any element of intent or volition from the final act of the workman. The easiest way to eliminate any element of volition may be to require a physiological impairment completely beyond the control of the injured party.[10] However, the *Sponatski* rule is most often applied where an injury allegedly produces a mental state of sufficient magnitude to strip the worker of any responsibility for his self destruction.

In applying the *Sponatski* rule, courts look initially for an injury arising in the course of employment. If there is no employment related injury, setting in motion the causal sequence leading to the suicide, the suicide is a complete defense.[11] Of course, the more severe the injury, the easier it is to introduce evidence to support an "uncontrollable impulse" or "delirium of frenzy" and courts lean to this interpretation.[12] The particular mode of self destruction also has an influence, with courts appearing to favor violent deaths[13] over less spectacular

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6 220 Mass. 526, 108 N.E. 466 (1915).

7 Hot lead splashed into his eye.

8 Daniels v. New York, N.H. and H.R. Co., 183 Mass. 393, 67 N.E. 424 (1903).

9 220 Mass. at 530, 108 N.E. at 468.

10 Hepner v. Department of Labor and Industries, 141 Wash. 55, 250 P. 461 (1926) (where the evidence disclosed that a compensable knee injury caused a toxic fluid to form which, when released, had the effect of producing insanity).

11 LARSON WORKMEN'S COMP. Vol. 1A § 36.10 at 510.15 (1967).

12 *In re* Sponatski, 220 Mass. 526, 108 N.E. 466 (1915) (hot lead in eye, compensation awarded); Crown Cork and Seal Co., 193 Pa. Super. 422, 165 A.2d 128 (Super. Ct. 1960) (amputation of leg, compensation awarded); *but see* Ruschetti's Case, 299 Mass. 426, 13 N.E.2d 34 (1938) (amputation of arm—compensation was denied).

13 Harper v. Industrial Comm., 24 Ill. 103, 180 N.E.2d 480 (1962) (shooting—compensation awarded); *In re* Sponatski, 220 Mass. 526, 108 N.E. 466 (1915) jumping from hospital

ones,[14] apparently on the basis that this tends to establish the lack of volition required under the rule. It appears that the degree of spontaneity required to preclude any element of intent or willful and voluntary choice is assessed in terms of physical stimuli producing a range of overt and objective behavioral symptoms very strongly indicative of insanity. It also appears that there must be a strong unbroken link between the injury and the suicide to avoid the application of the concept that the death is brought about by an "intervening cause" and therefore not compensable.[15]

The more liberal minority rule for compensable suicides is known as the "chain of causation" rule.[16] Its basic tenet is that the direct cause of the suicide be proximately related to the employment. The "irresistible impulse" or "delirium of frenzy" is replaced by a dominant disturbance of the mind[17] so that the suicide can be planned or premeditated as long as the workman is incapable of exercising sound discretion at the time of the act. Jurisdictions differ significantly in the application of this standard. While some courts require both a physical injury and resultant mental derangement,[18] several others[19] require no physical injury whatsoever. Even where the dominant disorder preexists the occupational injury or exposure, courts applying this rule seem to accept an aggravation or acceleration of the disorder if it is primarily caused by the work.[20]

It is readily apparent, even from a brief synopsis of these rules, that the *Sponatski* rule is considerably more harsh. It is of interest that

window—compensation awarded); Olson v. F.I. Crane Lumber Co., 259 Minn. 248, 107 N.W.2d 223 (1960) (hanging—compensation awarded); Anderson v. Armour and Co., 257 Minn. 281, 101 N.W.2d 435 (1960) (cutting of wrists and stabbing in heart—compensation awarded); Karlen v. Dept. of Labor and Industries, 41 Wash. 2d 301, 249 P.2d 364 (1952) (thrusting head against power saw—compensation awarded).

14 Estate of Vernum v. State University of N.Y. College of Forestry, 4 App. Div. 2d 722, 163 N.Y.S.2d 727 (1957) (carbon monoxide poisoning); Barber v. Industrial Comm., 241 Wisc. 462, 6 N.W.2d 199 (1942) (slashing of wrists).

15 Tetrault's Case, 278 Mass. 447, 180 N.E. 231 (1932); Barber v. Industrial Comm., 241 Wisc. 462, 6 N.W.2d 199 (1942) (where the court imposed the tort concept expressed in Daniels v. New York, N.H. and H.R. Co., 183 Mass. 393, 67 N.E. 424 (1903)).

16 *Supra* note 11; Annot., 15 A.L.R.3d 616, 631 (1967).

17 See the dissent in Barber v. Industrial Comm., 241 Wisc. 462, 6 N.W.2d 199 (1942), which, incidentally, gives a very good definition of the rule and its application.

18 Delinousha v. National Biscuit Co., 248 N.Y. 93, 161 N.E. 431 (1928).

19 Burnight v. Industrial Acc. Comm., 181 Cal. App. 2d 816, 5 Cal. Rptr. 786 (1960) (overwork); Trombley v. State, 366 Mich. 649, 115 N.W.2d 561 (1962) (stress of legislative investigation into work); Anderson v. Armour & Co., 257 Minn. 281, 101 N.W.2d 435 (1960) (remorse and depression after striking a pedestrian in course of employment).

20 Burnight v. Industrial Acc. Comm., 181 Cal. App. 2d 816, 5 Cal. Rptr. 786 (1960) (previous mental illness); Wilder v. Russell Library Co., 107 Conn. 56, 139 A. 644 (1927) (history of mental trouble in family).

Massachusetts modified its statute[21] to specifically allow for a compensable suicide where the injury rendered the worker "irresponsible" for his act; and in *In Re Oberlander's Case*,[22] the court, in denying the causal relationship between a finger injury and resultant suicide because of failure of proof,[23] specifically cited the revised statute and unsuccessfully sought to apply its rule. This would seem to indicate that the Massachusetts courts will adhere to the minority rule in future cases.

The first case in Washington to consider the application of a "suicide rule" was *Hepner v. Department of Labor and Industries*.[24] There, a workman, having previously suffered a compensable leg injury, wandered into the path of a moving train. The widow sought dependency benefits on the ground of accidental death, claiming that the leg injury caused the formation of a toxic fluid which escaped into his system and rendered him insane at the time of his fatal accident. Accepting these proofs, the court, almost as an aside, dismissed the defense of suicide by a recitation of the *Sponatski* rule. Thus began their commitment.

Ten years later in *Gatterdam v. Department of Labor and Industries*,[25] a compensable foot injury caused a painful bone disease, necessitating several amputations of the toes and portions of the foot. The pain was so severe that decedent was maintained on a steady course of morphine for the three months immediately preceding his suicide. On proof of "toxic insanity" due to the infection, morphine, and continued pain, the court found the death compensable. Relying on *Sponatski*, the court concluded that the jury could have found that the act was not the result of a voluntary willful choice determined by a moderately intelligent mental power which knows the purpose and physical effect of the suicidal act.[26]

Later that same year in *McFarland v. Department of Labor and Industries*,[27] suicide by hanging was held to be compensable when it resulted from a fractured leg and resultant painful phlebitis.[28] Evidence

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21 MASS. ANN. LAWS ch. 152 § 26A (1957).

22 348 Mass. 1, 200 N.E.2d 268 (1964).

23 The court held that the testimony of the expert physician called by the dependent failed to conclusively establish the relationship between the employment and the death with sufficient probability.

24 141 Wash. 55, 250 P. 461 (1926).

25 185 Wash. 628, 56 P.2d 693 (1936).

26 It is interesting to note that the court cited *Delinousha v. Natural Biscuit Co.*, 248 N.Y. 93, 161 N.E. 431 (1928), although apparently merely to fortify their finding of a cause-effect relationship.

27 188 Wash. 357, 62 P.2d 714 (1936).

28 "Inflammation of a vein. . . . The disease is attended by edema, stiffness and pain

of a "delirium of frenzy" was plentiful and considerations of acts preparatory to suicide as evidence of voluntary willful choice were not even entertained. Conspicuously absent was the lack of a physiological causative reference heretofore expressed. A direct relationship between trauma and psychosis was acceptable.

Next came *Karlen v. Department of Labor and Industries*[29] in which a worker fell and sustained a blow to the head. Although there was no physical or organic injury to the head, the worker developed a manic-depressive psychosis which the jury found to strip him of any volition in the commission of his bizarre self-destruction by thrusting his head against a running power saw.

Preceding *Schwab* was *Mercer v. Department of Labor and Industries*,[30] in which the worker sustained a serious hand injury over which he allegedly became so anxious and depressed as to his future that he killed himself eight months later. For a failure to support a claim that the suicide resulted from an "uncontrollable impulse" or a "state of delirium," the court, citing *Karlen*,[31] affirmed an order dismissing the claim.

New Jersey also follows the *Sponatski* doctrine. The first reported case,[32] decided one year after *Sponatski*, involved a workman who fell some 30 feet, sustaining serious head and back injuries, including lacerations of the brain tissue. He became totally and permanently disabled and insane as a result of his injuries and committed suicide approximately eight months after the accident. Although his death was compensable under almost any doctrine, the court applied the *Sponatski* rule in granting the award.

In *Kazazian v. Segan*,[33] the court was faced with a situation in which deceased, suffering from a compensable back injury with resultant pain and irrational behavior, hanged herself. Applying *Sponatski*, in the strictest manner conceivable, the court held that although possibly suffering from a deranged mind, decedent's preparation for the act evidenced a moderately intelligent mental power, thereby indicating that she knew the nature and consequence of her act so as to create a new and independent agency, breaking the chain of causation. Compensation was, of course, denied.

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in the affected part . . . .", as defined in DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 1040 (23d ed. 1957).

29 41 Wash. 2d 301, 249 P.2d 364 (1952).

30 74 W.D.2d 97, 442 P.2d 1000 (Sup. Ct. 1968).

31 41 Wash. 301, 249 P.2d 364 (1952).

32 Jaschiek v. Hoerner, 39 N.J.L.J. 149 (Essex Common Pleas, 1916).

33 14 N.J. Misc. 78, 182 A. 351 (1936) (Dept. of Labor, W. C. Bur.).

The next decision on the issue, *Konazewska v. Erie R. R. Co.*,[34] involved a suicide occurring less than three months following a compensable head injury with resultant brain damage. Reversing a verdict and an affirmance below, the court held that decedent's preparatory acts broke the causal connection between the injury and the final act.[35]

Finally, the New Jersey courts decided *Kievsky v. United Neon Supply Corp.*,[36] in which the compensability of the suicide of a workman, severely burned by chemicals and acid, was at issue. Although there was no organic brain damage, decedent developed severe physical complications and marked personality disturbances which eventually led to a manic-depressive psychosis. In finding for the dependent, the court, without even mentioning *Sponatski* or the method of self destruction, said:

> The evidence is satisfactory and the inference is warranted that the concededly compensable accident set in motion a chain of related events which culminated in the employee's death some nine months later. In view of the direct and circumstantial evidence tending to establish unbroken continuity of first physical and then mental degeneration following the injury, to the date of his death, the proofs are ample to support a finding that the death of the decedent was causally related to the accident.[37]

The problem of a compensable suicide has plagued the courts ever since the enactment of the Workmen's Compensation Statutes. Perhaps the greatest stumbling block has been the statutory exclusion of benefits to those (or their dependents) who inflict injuries on themselves or commit suicide. However, the difficulty is not in the prohibition but rather in its interpretation. Most courts still insist on a trauma or a physical injury, presumably to memorialize the events leading up to the final act. Only a few courts espousing the minority view[38] recognize that there are other factors of employment which can precipitate the same results as a physical blow.

The distinction between volition and non-volition creates an even finer line. The majority rule insists on a "delirium of frenzy" or an "irresistible impulse" resulting from a mental derangement of such magnitude as to destroy the individual's capacity to intend to commit the act. Such a narrow construction seems unrealistic when, at least

34 132 N.J.L. 424, 41 A.2d 130 (Sup. Ct. 1945), *aff'd*, 133 N.J.L. 557, 45 A.2d 315 (Ct. Err. & App. 1946).

35 The court in so ruling apparently relied solely on the statutory exclusion for they failed to cite any cases supporting their conclusion.

36 21 N.J. Misc. 43, 30 A.2d 40 (1942) (Dept. of Labor, W.C. Bur.).

37 *Id.* at 45, 30 A.2d at 42.

38 *See* cases cited note 19 *supra*; Wilder v. Russell Library Co., 107 Conn. 56, 139 A. 644 (1927).

within the worker's frame of reference, there must exist some element of intent, rational or irrational, to motivate his acts toward his own destruction. The test now imposed by these courts is "Did he mean it?"

Perhaps a more realistic approach would be to recognize the tremendous advances made in psychiatry and medicine since the formulation of our statutes and the rules of its interpreters. It seems more rational to say that if there is an injury or exposure arising out of or in the course of employment, which either causes or materially affects a condition in the employee, robbing him of the power to avail himself of a rational alternative to suicide, the suicide is compensable. The test then becomes "Could he choose it?"

Schwab is a step in the right direction. Although not abandoning the *Sponatski* rule, the court states:

> [I]t would appear we have broadened, somewhat, the concept, found in In re Sponatski, 220 Mass. 526, 108 N.E. 466 (1915), that an injury occasioned suicidal death to be compensable must occur from "an uncontrollable impulse or in a delirium of frenzy without conscious volititon to produce death," by extending it to include irresistible impulse, delirium caused by injury related drugs, pain, and suffering and/or other forms of acute dementia, any of which render the injured workman incapable, at the pertinent time, of forming a volitional and deliberate intent to commit suicide.[39]

It also appears that New Jersey seems at least disposed to abandoning the restraints of the outmoded majority rule. Several other states seem similarly motivated and one can only hope the trend will continue.

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[39] 76 W.D.2d at 952, 459 P.2d at 6.