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SINCE THE INSTITUTION of the Workmen's Compensation Acts, courts have recognized that in some instances compensation statutes cover suicide. However, these situations are few, and must meet a rigid set of tests before a court will award compensation to the decedent's family or survivors.

The leading case followed by the majority of courts in the United States was decided in Massachusetts in 1915.[1] It involved a foundry worker who was injured when hot lead splashed into his eye. He was taken to the hospital for treatment, and while there became so maddened by the pain that he leaped from a window to his death. The court held the suicide compensable because the act had been committed in a fit of frenzy where decedent had no control over his actions.

The decision in *Sponatski* was an aftermath of *Daniels v. New York, New Haven & Hartford Railroad Co.*,[2] decided in 1903, which involved tort liability for inducing suicide. While the court denied recovery to the plaintiff in *Daniels*, it went on to say that if the acts of the wrongdoer caused the decedent to commit suicide in a moment of insane, or uncontrollable frenzy, the suicide act being involuntary could not serve as an independent, intervening cause and the defendant would be liable.[3]

Following the decision in these two cases, courts throughout the United States have attempted to categorize and classify every type of broken and anguished mind. They have held a case to be compensable, or not compensable depending on whether the employee killed himself through voluntary choice, or through a delirious impulse, regardless of whether medical testimony showed the decedent was insane at the time he took his life.

Confusion has been created because many jurisdictions have promulgated their own rules and standards for applying

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1 In re Sponatski, 220 Mass. 526, 108 N. E. 466 (1915).

2 183 Mass. 393, 67 N. E. 424 (1903).

3 Ibid., at 426; and see, Note, 20 La. L. Rev. 791 (1960); Salsedo v. Palmer, 278 F. 92 (2d Cir. 1921); Cauverien v. DeMetz, 20 Misc. 2d 144, 188 N. Y. S. 2d 627 (1959).

the *Sponatski* rule, basing their decisions, in different areas, on the laws existing in the state at the time of the decision. Such tests include "intentional infliction of self-injury," "proximate cause," "voluntary willful choice," "chain of causation," "independent and intervening factor." Where a state has no criterion to apply, the courts have recourse to the old "arising out of employment" test. Although many courts agree that the *Sponatski* rule is unnecessarily harsh, they feel bound by procedure, precedent, and the ambiguous wording of state statutes. The courts realize that the rule is not adequate, but in the absence of more adequate tests they rarely deviate from the established pattern.

Regardless of the tests used by a jurisdiction, the general pattern is that compensable cases are frequently marked by some violent or eccentric method of self-destruction, while non-compensable cases usually present a story of quiet but ultimately unbearable agony leading to a solitary, undramatic suicide.[4]

Massachusetts has codified the *Sponatski* case into statute.[5] It makes compensation available when ". . . due to the injury, the employee was of such unsoundness of mind as to make him irresponsible for his act of suicide." The statute requires the same tests as in the M'Naghten rule, and as such has proven of little value in liberalizing, or improving recovery for compensation.

Minority View

The minority view takes a more liberal approach. New York, Ohio, Florida, and Mississippi have rejected the theory of the *Sponatski* case,[6] but in rejection have not made it easier to gain compensation. Rejection in these cases has only meant that compensation for suicide has been precluded on other grounds, or because of the application of other tests.[7]

Even the English courts, who claim to apply the minority view, are in almost the same state of confusion as is found in the

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[4] 1 Larson, Law of Workmen's Compensation 510.17 (1965).

[5] Mass. Ann. Laws, ch. 152, Sec. 26A (1965).

[6] Delinousha v. National Biscuit Co., 248 N. Y. 93, 161 N. E. 431 (1928); Burnett v. Industrial Commission, 93 N. E. 2d 41 (Ohio App. 1949); Whitehead v. Keene Roofing Co., 43 So. 2d 464 (Fla. 1949); Prentiss Truck & Tractor Company v. Spencer, 228 Miss. 66, 87 So. 2d 272 (1956).

[7] 1 Larson, op. cit. *supra* n. 4, at 25-26.

United States.[8] The English courts hold that if a compensable injury results in insanity and the insanity leads to suicide, the suicide cannot logically be an independent, intervening cause if there is an otherwise unbroken chain of causation between injury and death. However, the distinction enters in the court's application of the intervening factors.

The minority view is generally referred to as the "chain of causation" test.[9] This is misleading because a literal causation test based purely on antecedent causation would virtually result in absolute liability to the employer for employee suicides.

The minority view is represented by the case of *Wilder v. Russell Library Co.*,[10] where a library employee suffered a nervous breakdown from overwork and anxiety produced by the desire to do a good job, resulting in her committing suicide. There were no traumatic injuries. The court applied the "uncontrollable impulse" test and granted compensation for the suicide. The *Wilder* case has never been overruled, and stood, until recently, as the only case of its kind. This is so, not because of the reasoning of the case, or the tests applied, but because of the result reached.

Ohio follows the minority view, but does not strictly apply the "chain of causation," or the "uncontrollable impulse" test. Ohio has no specific statute which makes direct mention of suicide, but provides in its self-infliction of injury statute:

> Every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as a result of an occupational disease contracted in the course of employment, wherever such injury has occurred or occupational disease has been contracted, provided the same were not purposely 'self-inflicted,' is entitled to receive. . . .[11]

The self-infliction test is applied by statute in Ohio, even though the statutes also state:

> . . . the revised code shall be liberally construed in favor of the employees and dependents of deceased employees.[12]

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[8] Marriott v. Maltby Main Colliery Co., 13 B. W. C. C. (Scot.) 353 (1920); Graham v. Christie, 10 B. W. C. C. (Scot.) 486 (1916).

[9] 1 Larson, op. cit. *supra* n. 4, at 510.21. See, Lehman v. A. V. Winterer Co., 136 N.W. 2d 649 (Minn., 1965).

[10] 107 Conn. 56, 139 A. 644 (1927).

[11] Ohio Rev. Code Ann., § 4123.54 (1964).

[12] Ibid., § 4123.95 (1964).

Though the courts take the opposite view, it seems obvious that the purpose of the self-infliction statute was to prevent fraudulent claims and not to preclude compensation where the evidence is uncontrovertible.

An employer can make suicide under the self-infliction statutes a complete defense.[13] Statutes in forty-one states, the Longshoreman's Act and the United States Employee's Compensation Acts consider suicide a specific defense, either as suicide, or infliction of intentional self-injury. The reasons presented are:

1. Suicide does not arise out of employment since the source of harm is personal.
2. Suicide is a departure from the course of employment.[14]

States making no specific reference to suicide or intentional self-infliction by statute are: Connecticut, Illinois, Michigan, Montana, Nebraska, New Hampshire, and Wyoming.

Whether a court applies the majority or the minority view, states apply six basic tests, either singularly or in combination:

1. Proximate cause.
2. Voluntary and willful choice.
3. Independent intervening factors.
4. Intent to inflict self-injury.
5. Chain of causation.
6. Insane impulse.

Proximate Cause Test

To meet the test of proximate cause, there must be a physical injury which standing by itself would be compensable. The injury must occur during an in-the-course-of-employment situation, and the suicide is then traced back to the original injury. If there is no employment-connected injury to set in motion the causal sequence leading to suicide, the suicide is a complete defense to the employer to preclude recovery. For example where an employee was seen running through the plant holding his head in apparent pain, and was later found to have thrown himself out of a window, compensation was denied because no industrial injury could be found as the initial cause.[15] In another

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[13] Wilder v. Russell Library Co., *supra* n. 10; 1 Larson, op. cit. *supra* n. 4, at 510.15.

[14] 1 Larson, op. cit. *supra* n. 4, at 510.15.

[15] Joseph v. United Kimono Co., 194 App. Div. 568, 185 N. Y. S. 700 (1921).

case, where an employee impetuously drank a bottle of acid during working hours, compensation was denied.[16] Compensation was also denied where the claimant tried to blow himself up for no apparent reason,[17] and where after getting dust in the eye, and receiving first-aid, employee became insane and died four months later.[18]

The Voluntary Willful Choice Test

This test applies to cases where there follows, as a direct result of an accident, a physical injury and insanity of such violence as to cause the victim to take his life through either an uncontrollable impulse or a delirium of frenzy lacking conscious volition to produce death without knowledge of the physical consequences of the act. If this test is met, there is an *unbroken* causal connection between physical injury and death. However, 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 a suicidal act, there is a new and independent agency which breaks the chain of causation arising from the injury. This is so even though choice is dominated and ruled by a disordered mind.[19]

In one case, a worker was undergoing treatment in a hospital for acute melancholia caused by physical injuries he sustained in an industrial accident. He subsequently leaped from the hospital window to his death. The court held the claim compensable.[20] However, no compensation was allowed where an employee, suffering from unbearable pain following an accident, after talking sensibly to neighbors, went into a cornfield and shot himself.[21] The court held the decedent appreciated the act where he waited until the family had gone to Sunday School before committing suicide.[22] Where a decedent left a note show-

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16 Shewczuk v. Contrexeville Mfg. Co., 53 R. I. 223, 165 A. 444 (1933).

17 Lopez v. Kennecott Copper Corp., 225 P. 2d 702 (Ariz. 1950).

18 Veloz v. Fidelity Union Casualty Co., 8 S. W. 2d 205 (Tex. Civ. App. 1928).

19 1 Larson, op. cit. *supra* n. 4.

20 Gasperin v. Consolidated Coal Co., 293 Pa. 589, 143 A. 187 (1928).

21 Kasman v. Hillman Coal & Coke Co., 149 Pa. Super. 263, 27 A. 2d 762 (1942).

22 Industrial Commission of Ohio v. Brubaker, 129 Ohio 617, 196 N. E. 409 (1935).

ing a deliberate and reasoned decision that the suicide was the best solution, the court held that to allow compensation there must be actual insanity.[23] However, the court held compensable a case where a decedent, who suffered from pain of phlebitis, struck his daughter and then ran out and hanged himself.[24]

The Independent Intervening Factor Test

The independent intervening factor test is another means by which some courts consider a claim. Most cases in this area follow the same facts pattern: a severe, or extremely painful, or hopelessly incurable injury, followed by a deranged mental state ranging from depression to violent lunacy, followed by suicide. Almost all authorities appear to agree on the basic legal question: was the act of suicide an intervening cause breaking the chain of causation between the initial injury and death? The only controversy involves the kind and degree of mental disorder which will lead the court to say that self-destruction was not an independent intervening factor or cause.[25] ". . . New, independent intervening cause must be one not produced by wrongful act, or omission, but independent of it. . . .[26]

The Chain of Causation Test

The chain of causation test is similar to the requirements of the independent intervening factors test: where there is an intervening cause, the chain of causation is broken and recovery is precluded. The intervening cause issue need not turn on the employee's knowledge that he is killing himself. If the first cause produces the second cause,[27] though indirectly, the second cause cannot be said to be an independent cause.

Insane Impulse Test

Problems arise in the administration of the insane impulse test because courts use different yardsticks to measure it. One court may focus attention solely on facts revealing conscious volition, while another may rely exclusively on evidence re-

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[23] Bevan v. Lancaster Steam Coal Collieries [1927] 20 B. W. C. C. 241.

[24] McFarland v. Department of Labor and Industries, 188 Wash. 357, 62 P. 2d 714 (1936).

[25] 1 Larson, op. cit. *supra* n. 4, at 510.15.

[26] Prosser, Law of Torts, 266-267, § 49 (2d ed. 1955).

[27] 1 Larson, op. cit. *supra* n. 4, at 510.22.

lating to the extent of the delusion and awareness of the physical consequences of the suicidal act. Sometimes the true reason for the decision may be obscured by other considerations remote from the standards. Under the test of the *Sponatski* case, which applies here, there must be absence of willful intent at the moment of death. The dogmatic application of the test ignores and precludes compensation where pain was so intense that the claim of death becomes the sole concern and where in effect resistance to the suicidal impulse is impossible.[28]

In Iowa where a worker had an on-the-job fall and a week later took his life, expert testimony showed that the accident had caused the mental derangement. However, compensation was resisted on the ground that the injury was caused by the employee's *intent* to injure himself (Iowa has a self-infliction of injury statute). The Iowa State Supreme Court affirmed and held the claim compensable: "the widow had proved to the court that the decedent was motivated by an uncontrollable impulse, or was in a delirium of frenzy, without conscious volition to produce death." [29] In *Blasczak v. Crown Cork and Seal Company*,[30] the employee hanged himself four months after he lost his leg in an industrial accident. The Pennsylvania rule relies on the "uncontrollable insane impulse" test to defeat the statutory defense of intentional self-infliction. Although the deceased appeared to act normal on the date of his death, a psychiatrist testified that he was "out of his mind," and compensation was allowed. However, where the victim lost two fingers, later became depressed and took his life, the court held that the decedent was not deranged even though depressed. The contents of a suicide note was not sufficient to show a deranged mind.[31]

The above are some of the tests courts use to determine whether a suicide is compensable under the Workmen's Compensation Statutes of their respective states. Whether a court applies the majority rule, minority rule, or whether it uses terms such as proximate cause or independent intervening factor makes little difference. In the final analysis all the tests comprise the same basic requirements: the injury must arise

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[28] Note, 31 U. Cinc. L. Rev. 187 (1962).

[29] Schofield v. White, 250 Iowa 571, 95 N. W. 2d 40 (1959).

[30] 193 Pa. Super. 422, 165 A. 2d 128 (1960).

[31] Widdis v. Collingdale Millwork Co., 169 Pa. Super. 612, 84 A. 2d 259 (1951).

out of the employment, and the suicide must arise out of the injury, or at least directly from it. An examination of the decisions indicates that the courts, regardless of tests, will allow compensation for violent and tragic deaths. The courts' outlook on calm deaths appears to be colored with the stigma which regards suicide as being criminal.[32]

Here are some cases which illustrate the *violent* vs. the *non-violent* views. In *Kelly v. Sugarman,*[33] the decedent suffered from aggravated, pre-existing osteo-arthritis, followed by periods of total and partial disability. To ease the severe pains the decedent turned to drugs and drinking. While intoxicated, the decedent locked himself in the basement of his dwelling and stabbed himself in the neck with a knife. The court held the suicide was compensable. In *Karlen v. Department of Labor and Industries,*[34] the victim suffered a hand injury which later led to depression and finally confinement in an institution. The victim committed suicide by thrusting his head against the blade of a power saw. The suicide was held compensable. Based on this decision courts do not seem to place a time limit which specifies when the suicide must take place, as long as it is violent.[35] One case allowed compensation for a suicide which took place eleven years after the decedent had received a compensable injury to his head.[36] The decision relied solely on the finding of causal relationships.

It is when death is non-violent that courts and administrators can best apply the tests which deny compensation. The favorite seems to be that the decedent realized what he was doing, or knew the consequences of his act. Considering the facts of the case, the court will decide as it did in *Tetrault's Case,*[37]

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[32] Zimmiski v. Lehigh Valley Coal Company, 200 Pa. Super. 524, 189 A. 2d 897 (1963); Suicide following a silicotic disability held not compensable. Dissenting opinion likened majority's reasoning to the McNaghten rule in criminal law. This probably stems from the concept of the Middle Ages where in order for a person to be insane, the test was whether he was foaming at the mouth. For a discussion of the history of treatment of mental disease, see L. P. Thorpe and B. Katz, Psychology of Abnormal Behavior, Ch. 1 and 2 (____).

[33] 5 App. Div. 2d 1023, 173 N. Y. S. 2d 41 (1958).

[34] 41 Wash. 2d 301, 249 P. 2d 364 (1952).

[35] Ibid; Sulfaro v. Pellegrino & Sons, 2 App. Div. 2d 426, 156 N. Y. S. 2d 411 (1956). In the Sulfaro case, suicide was committed two years after the injury and derangement. But see (3 years later) Lehman v. A. V. Winterer Co., 136 N.W. 2d 649 (Minn. 1965).

[36] Falso v. National Wire & Protective Co., 17 App. Div. 667, 230 N. Y. S. 2d 164 (1962).

[37] 278 Mass. 447, 180 N. E. 231 (1932).

that the party who committed suicide was not deranged, because he waved and said "goodbye" before leaping from a bridge. The reasoning of the court here is strange because it considered a person who talked to others before dying sane enough to realize the consequences of his act. Decedent talked to several people before he leaped.

Another area of non-violent death cases which courts view as not compensable are those which indicate planning before the act. Traveling to Canada to commit suicide in a lonely hotel room,[38] or waiting until the family had gone to Sunday School,[39] were held non-compensable because the victims realized the consequences of their acts by formulating a plan as evidenced by their actions. Suicide notes seem to be the ultimate to show intent or knowledge of the consequences of the suicide act.[40] One who leaves a note is considered not to have a deranged mind.[41]

Tests are particularly harsh when reviewed in the light of the non-violent cases and the view that a person who leaves a note has no valid reason for taking his life.[42] Courts and legislatures do not account for victims who, after sustaining an injury, become demented, their minds twisted until suicide seems to be the best solution to their plight. This view further fails to recognize the role unbearable pain or despair play in breaking down the rational mental process.[43] Circumstances can place a victim in such a mental state that death actually seems more attractive than life. The decedent may not only have a conscious desire to produce death, but an eager one as well.[44] The classic example is the victim who, after leaving work early, drove to a lonely spot where he wrote a note saying: "have a good wife, & child, just in pain," then shot himself in the head.[45]

Based on tests applied by the courts and the precedent set by previous cases, the general answer to a case of death by sui-

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[38] Barber v. Industrial Commission, 241 Wis. 462, 6 N. W. 2d 199 (1942).

[39] Industrial Commission of Ohio v. Brubaker, *supra* n. 22.

[40] Bevan v. Lancaster Steam Coal Collieries, *supra* n. 23.

[41] Ibid.

[42] Widdis v. Collingdale Millwork Co., *supra* n. 31.

[43] 1 Larson op. cit. *supra* n. 4, at 510.22.

[44] Morgan, Physiological Psychology, 357 (1943); Menninger, Man Against Himself, p. V (1957 ed.).

[45] Harper v. Industrial Commission, 24 Ill. 2d 103, 180 N. E. 2d 480 (1962).

cide is: *non-compensable*. However, the question must be asked: is it fair to the decedent's family to say that compensation cannot be had because of the uncontroverted evidence of volition when in actuality the unbearable pain was caused by an incurable injury? Certainly, here money damages cannot make the victim whole.

The theory of Workmen's Compensation is to do away with the concept of liability and negligence, but in so doing it is not, or should not be, a means of protecting the premium rates of the employer.