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SUICIDE AS A COMPENSABLE CLAIM UNDER WORKERS' COMPENSATION STATUTES: A GUIDE FOR THE LAWYER AND THE PSYCHIATRIST

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We live in a highly complex, industrialized environment.[1] Specific work-related events occurring within this context frequently impact negatively on those who are essential to the operation of our industrial system.[2] Often the impact of events produces human misery, suffering and death. Men and women are injured, maimed and killed. Workers' compensation statutes exist to ameliorate the plight of workers and their families[3] through the utilization of compensation in the form of cash-wage benefits and medical care.[4] The economic burden of compensation is ultimately borne by consumers,[5] because the cost of insurance taken out by employers is passed on in the price of the goods and services produced.[6]

Both workers' compensation statutes and the systems produced by those statutes are appropriate responses to the perceived needs of all who have an interest in a productive economy and a just social order. As in any decision-

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[1] Attorneys, judges, legislators, psychiatrists, psychologists and academicians need to be aware of the literature critical in the analysis of this problem. Successful practical and theoretical work depends upon access to quality information. The authors have attempted herein to provide both the practitioner and the expert with a core of relevant information which would well serve those who, of necessity or out of academic interest, concern themselves with the suicide phenomenon occurring within the decision-making realm of workers' compensation systems.

[2] *See generally* 1 A. LARSON, LARSON'S WORKMEN'S COMPENSATION § 1.10, at 1-1 (1983) [hereinafter cited as LARSON'S WORKMEN'S COMPENSATION].

[3] *See, e.g.*, Allstate Ins. Co. v. King, 434 S.W.2d 162 (Tex. Civ. App. 1968), *rev'd on other grounds*, 444 S.W.2d 602 (Tex. 1969) (workers' compensation act should be liberally construed because of its inherent humanitarian purposes); *see also* ISSUES CONFRONTING THE 1980 KENTUCKY GENERAL ASSEMBLY 129-34 (1974) (superseded by the LEGISLATIVE RESEARCH COMMISSION—BULLETIN NO. 131).

[4] LARSON'S WORKMEN'S COMPENSATION, *supra* note 2, § 1.10, at 1-1.

[5] *See* Annot., 15 A.L.R.3d 616, 631 (1967), wherein it is stated that:

> [T]he general socioeconomic purpose of the workmen's compensation statutes . . . is to provide financial and medical benefits to the victims of "work-connected" injuries and their families—regardless of fault—which any enlightened community would feel obligated to prove in any case, and to allocate the financial burden to the most appropriate source, the employer, and, ultimately, the consumer of the product.

See also Case Comment, *Workmen's Compensation: Suicide Resulting From Mental Disorder Caused by Work-Connected Injury Held Compensable*, 1962 DUKE L.J. 618, 622 n.24 (1962) [hereinafter cited as *Duke Comment*]. *See generally* Casenote, *Compensability of Suicide of Mentally Ill Employee*, 8 U.C.L.A. L. REV., 673, 674 (1961).

[6] LARSON'S WORKMEN'S COMPENSATION, *supra* note 2, § 1.00, at 1-1.

making system designed to deal with complex cases, however, there exist opportunities for disagreement concerning the legal disposition of certain cases. This article deals with one of those matters which is subject to such serious debate: When should suicide,[7] following a trauma experienced within the job context, give rise to a compensable claim under workers' compensation statutes? Although there has been prior general commentary on the problem,[8] this article will offer some additional and perhaps useful information to both the attorney representing the claimant and the psychiatrist called to testify as an expert witness.

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[7] A rather unsophisticated definition of suicide is "the act or an instance of taking one's own life voluntarily and intentionally." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2286 (1976). Suicide has also been inappropriately characterized as an act which is committed by a person "who is able to weigh and appreciate the results of the contemplated deed." Note, *Suicide Under Workmen's Compensation Laws*, 12 CLEV.—MAR. L. REV. 26 (1963) [hereinafter cited as *Clev.—Mar. Note*]; Hepner v. Department of Labor and Indus., 141 Wash. 55, 250 P. 461 (1926).

Suicide is a phenomenon which recently has begun to receive the attention it deserves. P. DOLAN, M.D. & D. ROCKWELL, M.D., PSYCHIATRIC DISORDERS: DIAGNOSIS AND TREATMENT 294 (1982). One percent of all deaths are recorded as resulting from suicide; however, researchers are certain that the true figure is much higher. *Id.* Modern psychiatric data has revealed that, in truth, there is a suicide "iceberg." An analysis of the "iceberg" confirms that above the hypothetical water line there are at least 25,000 deaths which take place by suicide each year. *Id.* at 295. Below the hypothetical water line one discovers approximately 250,000 attempts, 2,500,000 threats, and 25,000,000 instances of suicidal idealations or suicidal gesturing. *Id.* Thus, it becomes readily discernible that this "phenomenon" has the actual and potential capacity to affect negatively over 100,000,000 associated family members each year. *Id.* at 295. It is indisputable that human beings are suicide vulnerable. To deny the inherent vulnerability which exists in each and every one of us is to avoid our responsibility to ourselves and to society.

It is well-established that psychological damage can be produced by on-the-job trauma. Various psychological states, most notably depression, resulting from on-the-job trauma, and the drugs prescribed after job-related trauma, are both factors creating a special risk of suicide. *Id.* at 296-300.

It is unquestionable that the physical and psychic pain following work-related trauma can be so disturbing to one's psychic homeostasis that the injured worker is persuaded to commit suicide. *Id.* at 179. *See* MORGAN, PHYSIOLOGICAL PSYCHOLOGY 357 (1943). Although the authors possess no exact data, a review of the workers' compensation literature makes it clear that there are a substantial number of suicides which are the product of work-related trauma.

The psychiatric reality is that in almost all cases suicide is a self-destructive act manifesting an extreme degree of personality dysfunction. Suicides antedated by bodily or another type of trauma are in the great majority of cases the product of the dysfunctional self's effort to overcome disabling pain, the impotence of helplessness and the nauseating despair of an existence devoid of hope. *See, e.g.*, A. BECK, DEPRESSION (1976); M. BLINDER, PSYCHIATRY IN THE EVERYDAY PRACTICE OF LAW (2d ed. 1982); N. FARBEROW & E. SCHNEIDMAN, THE CRY FOR HELP (1965); R. FIEVE, MOODSWING (1976); P. GIOVACCHINI, THE URGE TO DIE (1983); H. HENDIN, BLACK SUICIDE (1971); J. HILLMAN, SUICIDE AND THE SOUL (1964); L. KOLB, MODERN CLINICAL PSYCHIATRY (1977); R. LIFTON, THE BROKEN CONNECTION (1979); A. LUDWIG, PRINCIPLES OF CLINICAL PSYCHIATRY (1980); K. MENNINGER, MAN AGAINST HIMSELF (1938); E. SCHNEIDMAN, SUICIDOLOGY: CONTEMPORARY DEVELOPMENTS (1976); E. SCHNEIDMAN, DEATHS OF MAN (1974).

[8] At least two other extensive discussions of the suicide phenomenon in the area of workers' compensation law have been published. *See* Annot., 15 A.L.R.3d 616 (1967); LARSON'S WORKMEN'S COMPENSATION, *supra* note 2, § 36.

A working comprehension of the psychiatric aspects of suicide is necessary in order to prepare and prosecute a successful claim or to organize a defense in this area of the law. Additionally, the expert, even if carefully selected, must understand the legal framework in which his or her testimony will be interpreted. Unquestionably, a working relationship between the attorney and the psychiatrist is a necessity in terms of preparation. Many practitioners, however, may initially fail to realize that the early decisions recognizing suicide as a compensable workers' compensation claim erroneously focus upon knowledge, cognition and uncontrollable impulses. Since the articulated models utilized by these courts in the earlier cases have become entrenched in some jurisdictions and in the minds of many judicial decisionmakers, the psychiatric expert will often be forced to apply modern theories of psychiatry to illegitimately unscientific modes of legal analysis. These factors become increasingly important since many courts, when confronted with the generally liberal application of workers' compensation statutes[9] and the advent of modern scientific insights into the causes of suicide,[10] have been forced to consider the issue of whether an employee's suicide which follows a compensable on-the-job injury should constitute a separate ground for workers' compensation benefits.

The theory behind successful claims of this nature has been that an employee who has suffered a compensable injury, which in turn triggers a psychiatric disorder resulting in suicide, is entitled to both an inter vivos compensation award and a death benefit. It is clear, however, that since suicide is generally *defined* as an "intentional" act (without regard to whether or not suicide is psychiatrically considered volitional or nonvolitional), many jurisdictions would deny workers' compensation death benefits to employees who take their own lives.[11] Classic concepts indicate that recovery should be

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[9] *See, e.g.*, Saunders v. Texas Employers' Ins. Ass'n, 526 S.W.2d 515 (Tex. 1975); Case Comment, *Workmen's Compensation—Suicide Which Results from an Irresistible Impulse Caused by a Work-Connected Injury Is Compensable Under the Texas Workmen's Compensation Act*, 7 TEX. TECH. L. REV. 810, 812 (1976) [hereinafter cited as *Texas Tech Comment*].

[10] *See supra* note 7. *See also* Avery v. City of Middletown, 40 A.D.2d 568, 334 N.Y.S.2d 708 (App. Div. 1972), *rev'd*, 33 N.Y.2d 771, 350 N.Y.S.2d 412 (1973) (adopting lower court's dissent); Reinstein v. Mendola, 39 A.D.2d 369, 334 N.Y.S.2d 488 (App. Div. 1972), *aff'd*, 33 N.Y.2d 589, 301 N.E.2d 438, 347 N.Y.S.2d 455 (1973); MORGAN, PHYSIOLOGICAL PSYCHOLOGY 357 (1943); Berger, *Drugs and Suicide in the United States*, 8 CLINICAL PHARMACOLOGY & THERAPEUTICS 219 (1967).

In a recent decision, the West Virginia Supreme Court of Appeals noted that "mental disorders, such as [a] manic depressive condition, . . . can operate 'to break down rational mental processes, placing the person afflicted in a mental state in which death actually seems more attractive than living, and in which he may not only have a conscious volition to produce death, but be eager to do so.'" Hall v. State Workmen's Compensation Comm'r, 303 S.E.2d 726, 730 (W. Va. 1983) (quoting Burnight v. Industrial Accident Comm'n, 181 Cal. App. 2d 816, 826, 5 Cal. Rptr. 786, 793 (1960)).

[11] For example, W. VA. CODE § 23-4-2 (Supp. 1983) provides, in part:

[N]o employee or dependent of any employee shall be entitled to receive any sum from the workmen's compensation fund . . . on account of any personal injury to or death to

granted, if at all, only when there has been a "work related harmful change in the human organism, arising out of and in the course of employment. . . ."[12] Nevertheless, when a direct causal relationship can be established among a work-related injury, a psychiatric disorder, and subsequent suicide, traditional notions should be updated and expanded to permit death benefit awards.

Courts, when confronted with this dilemma, have utilized four different types of analyses. These modes of analysis can properly be identified as the *Sponatski* test,[13] the New York rule,[14] the English rule[15] and the chain of

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any employee caused by a self-inflicted injury, or the intoxication of such employee.

A vast majority of states have a statutory bar similar to West Virginia's and interpret "self-inflicted" to mean intentional. Thus, those courts which embrace anacronistic definitions of suicide refuse to allow recovery for any suicide, even when a mental disease or illness created by an on-the-job injury precipitates the suicidal act and removes the element of intent from the mind of the actor. *See supra* note 7 for discussion of representative definitions of suicide. For example, KY. REV. STAT. ANN. 342.610(3) (Baldwin 1982) states "[l]iability for compensation shall not apply where injury, occupational disease, or death to the employee was proximately caused primarily by his intoxication or by his *willful intention* to injure or kill himself or another." (emphasis added). The federal counterparts to these defenses are found in the Employees' Compensation Act, 5 U.S.C. § 8102(a)(2) (1976) and the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 903(b) (1976). The states whose workmen's compensation statutes "make no specific reference to suicide or intentional self-injury are those of Connecticut, Illinois, Michigan, Montana, Nebraska, New Hampshire, and Wyoming." LARSON'S WORKMEN'S COMPENSATION, *supra* note 2, § 36.10, at 6-117 n.2.

[12] KY. REV. STAT. ANN. § 342.620(1) (Baldwin 1982). KY. REV. STAT. ANN. § 342.005, repealed by Act of March 17, 1972, ch. 78, § 20, 1972 Ky. Acts 305, 349, limited recovery to those claims which were "traumatic, sustained by accident and [arose] out of and in the course of employment." Seventh St. Rd. Tobacco Warehouse v. Stillwell, 550 S.W.2d 469, 470 (Ky. 1976). The effect of the change "was to expand workmen's compensation coverage to nontraumatic injuries." *Id.*

[13] *See infra* notes 17-58 and accompanying text for discussion of the *Sponatski* test.

[14] *See infra* note 71 for a discussion of the New York rule.

[15] Research reveals that no American jurisdictions follow the English rule, therefore, it does not merit extensive textual treatment. The English rule is somewhat similar to the New York rule in that it requires that the psychiatric disorder which precipitates the suicidal act be the direct result of the compensable injury, rather than an indirect result caused by brooding, melancholia or depression. However, the English rule is a bastardized remnant of what is totally unsupportable by modern psychiatric data.

The English rule represents a mode of analysis which ignores both the far-reaching effects which pain, depression and melancholia can have on the mind as well as the humanitarian policies which workers' compensation statutes were designed to promote. *See, e.g.*, LARSON'S WORKMEN'S COMPENSATION, *supra* note 2, § 2.20 and authorities cited at *supra* note 3. The English courts which have been confronted with this issue have viewed "[i]nsanity as a question of degree" and have explained their analysis in the following manner:

> You depart from the ordinary statement of sanity of your time, and it may be that that physical change in the first place that takes place from the shock of the accident may take you so far from the normal standard of sanity that you would be considered insane. And if then the suicide results from that condition of mind you may have a case where the accident has caused the suicide. On the other hand you may have a case where the accident has created some physical disability which causes great pain and continuing

causation test.[16] This article examines the evolution of judicial understanding of suicide as related to the workers' compensation system, endorses the liberal chain of causation test, and demonstrates that the chain of causation approach most closely corresponds with modern psychiatric theory.

I. THE *SPONATSKI* TEST

The test historically utilized by a majority of jurisdictions confronting

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> pain after the accident which engenders great apprehension of poverty, and a mind which was sound at the time of the accident and after the accident may continue thinking about this fear of pain in the future, or this fear of poverty, and brood over it, and gradually get into such a morbid condition that from the result of that brooding you commit suicide, and the line between the two is not easy to draw. Obviously there will be a state of things which is half-way between the two. But, in my view, if you get the first state of facts you get a case where the suicide does result from the accident. If you get the second state of facts you get a state of facts where the suicide is too remote from the accident to be considered the cause of it.

Annot., 15 A.L.R.3d 616, 636 (1967) (quoting Marriott v. Maltby Main Colliery, [1920] All E.R. 193, 124 L.T.R. (n.s.) 489, 90 L.J.K.B. (n.s.) 489 (Eng. C.A.)).

An overview of the results obtained in many of the English cases reveals the fallacious reasoning which has been employed in their decisions. For instance, compensation was allowed in the following cases: In Marriott v. Maltby Main Colliery Co., [1920] All E.R. 193, 123 L.T.R. (n.s.) 489, 90 L.J.K.B. (n.s.) 489 (Eng. C.A.). a mine roof prop was knocked away from and created the possibility that a cave-in would occur. The prop fell upon a mine worker's hand causing him serious injury and extreme fright. After the accident he became very depressed and three months later cut his throat with a razor. Compensation was allowed based upon a holding that the shock of the accident caused the insanity to develop. *See also* Fanning v. Richard Evans & Co., 16 B.W.C.C. 43 (Eng. 1923) (compensation allowed based upon a direct chain of causation between a miner's nystagmus, his subsequent development of psychosis and eventual suicide); Dixon v. Sutton Heath & Lea Green Colliery, Ltd., 23 B.W.C.C. 135 (Eng. C.A. 1930) (compensation allowed after suicide by drowning based upon direct causal link between nystagmus and the subsequent suicide).

Compensation has been denied in a number of cases because English courts concluded that the suicide was the result of the injured workers' brooding after the accident, thereby theoretically (and fallaciously) breaking the chain of causation: *See, e.g.*, Grime v. Fletcher, [1915] 1 K.B. 734 (Eng. C.A.) (decedent suffered eye injury and attempted to continue work even though his physician advised him that he would have to stop working or lose his sight; in a fit of depression the worker committed suicide); Withers v. London, B. & S.C. Railway Co., [1916] 2 K.B. 772 (Eng. C.A.) (thumb injury prevented worker from continuing work, causing depression, delusion of permanent incapacity and ending in suicide four months later); Brown v. Kingsbury Collieries, Ltd., [1921] 14 B.W.C.C. 244 (Eng. C.A.) (benefits denied based upon the court's characterization of the original injury as intentionally self-inflicted); Bevan v. Lancasters Steam Coal Collieries, [1927] 20 B.W.C.C. 241 (Eng. C.A.) (denial based upon what the court characterized as a "rational" suicide note); Johnson v. F. Warren & Co., [1928] 21 B.W.C.C. 411 (Eng. C.A.) (where a worker crushed by horse and cut his throat two years later compensation was denied based upon brooding of injured worker); Bradshaw v. Bickerstaffe Collieries, [1931] 24 B.W.C.C. 451 (Eng. C.A.) (when miner's nystagmus resulted in severe depression and he subsequently committed suicide by slitting his throat and drowning benefits were denied based upon court's finding that there was no evidence of disordered conduct or delusions).

[16] *See infra* notes 59-92 and accompanying text for a discussion of the chain of causation test.

this issue[17] was first enunciated by the Massachusetts Supreme Court in *In re*

[17] The *Sponatski* test has been recognized in Iowa, Massachusetts, Minnesota, Missouri, New Jersey, Ohio, Oregon, Pennsylvania, Texas, Vermont, Washington and Wisconsin. *See, e.g.*, Schofield v. White, 250 Iowa 571, 95 N.W.2d 40 (1959) (benefits granted based on findings of a causal connection between suicide and brain injury resulting from accident that arose in the course of employment, but *Sponatski* principles recited); Ruschetti's Case, 299 Mass. 426, 13 N.E.2d 34 (1938) (work-related injury resulting in arm amputation; suicide by hanging; benefits denied even though expert testimony established that decedent was insane); Tetrault's Case, 278 Mass. 447, 180 N.E. 231 (1932) (benefits denied because decedent waved "goodbye" before he jumped from a bridge, which the court felt showed the absence of an uncontrollable impulse); Lehman v. A. V. Winterer Co., 272 Minn. 79, 136 N.W.2d 649 (1965) (suicide three and one-half years after the original injury, benefits denied under *Sponatski* because the resulting mental disease was considered too remote and speculative); Anderson v. Armour & Co., 257 Minn. 281, 101 N.W.2d 435 (1960) (benefits allowed, decedent slashed his wrists then plunged knife into his heart); Mershon v. Missouri Pub. Serv. Corp., 359 Mo. 257, 221 S.W.2d 165 (1949) (unclear expert testimony on causation issue; work injury not proven; benefits denied; *Sponatski* type analysis recited); Konazewska v. Erie R.R., 132 N.J.L. 424, 41 A.2d 130 (1945), *aff'd*, 133 N.J.L. 557, 45 A.2d 315 (1946), *overruled sub nom.* Kahler v. Plochman, 85 N.J. 539, 428 A.2d 913 (1981) (suicide by hanging, benefits denied, no uncontrollable impulse); Kazazian v. Segan, 14 N.J. Misc. 78, 182 A. 351 (1936) (*Sponatski* quoted; benefits denied because of decedent's meticulous preparation before committing suicide by hanging); Industrial Comm'n. v. Brubaker, 129 Ohio St. 617, 196 N.E. 409 (1935) (benefits denied, no uncontrollable impulse); Speece v. Industrial Comm'n, 46 Ohio L. Abs. 453, 70 N.E.2d 387 (1945) (work injury from exposure to severe cold; suicide; *Sponatski* test cited, benefits granted); Jones v. Cascade Wood Products, 21 Or. App. 86, 533 P.2d 1399 (1975); Gasperin v. Consolidated Coal Co., 293 Pa. 589, 143 A. 187 (1928); Lupfer v. Baldwin Locomotive Works, 269 Pa. 275, 112 A. 458 (1921) (electric shock; intense pain; suicide benefits awarded); Zimmiski v. Lehigh Valley Coal Co., 200 Pa. Super. 524, 189 A.2d 897 (1963) (anthracosilicosis, neither causal connection nor irrational impulse proven; benefits denied); Blasczak v. Crown Cork & Seal Co., 193 Pa. Super. 422, 165 A.2d 128 (1960) (foot injury; amputation; hanging; benefits awarded); Widdis v. Collingdale Millwork Co., 169 Pa. Super. 612, 84 A.2d 259 (1951) (anthracosilicosis, benefits denied); Vadnal v. Krsul-Kutchel Coal Co., 149 Pa. Super. 269, 27 A.2d 709 (1942) (hanging, uncontrollable impulse, benefits awarded); Kasman v. Hillman Coal & Coke Co., 149 Pa. Super. 263, 27 A.2d 762 (1942) (back injury, intentional suicide, benefits denied); Cubit v. Philadelphia, 138 Pa. Super. 325, 10 A.2d 853 (1940) (cerebral concussion, suicide six months later; causal connection and involuntary behavior unclear; remanded); University of Pittsburgh v. Workmen's Comp. Appeal Bd., 49 Pa. Commw. 347, 405 A.2d 1048 (1979) (doctor suffering extreme stress; received leave of absence with pay, committed suicide; benefits awarded); Jones v. Traders & General Ins. Co., 144 S.W.2d 689 (Tex. Civ. App. 1940), *aff'd*, 140 Tex. 599, 169 S.W.2d 160 (1941) (foot injury; multiple infections; suicide by poisoning); McKane v. Capital Hill Quarry Co., 100 Vt. 45, 134 A. 640 (1926) (benefits denied when suicide is the result of a voluntary, willful choice, with knowledge of the purpose and physical effect of the act); Mercer v. Department of Labor & Indus., 74 Wash. 2d 96, 442 P.2d 1000 (1968) (serious hand injury to logger, benefits denied where medical evidence did not establish suicide committed while acting under an uncontrollable impulse or while in a delirium); Karlen v. Department of Labor & Indus., 41 Wash. 2d 301, 249 P.2d 364 (1952) (head injury; manic depressive psychosis; suicide by thrusting head into power saw); McFarland v. Department of Labor & Indus., 188 Wash. 357, 62 P.2d 714 (1936) (leg fracture; phlebitis; hanging; benefits granted); Gatterdam v. Department of Labor & Indus., 185 Wash. 628, 56 P.2d 693 (1936) (foot injury; osteomyelitis; amputations; suicide; benefits awarded); Barber v. Industrial Comm'n., 241 Wis. 462, 6 N.W.2d 199 (1942) (injury resulted in sexual impotence; suicide by shooting; benefits granted). Many of these jurisdictions have now abandoned the *Sponatski* test in favor of the chain of causation analysis. *See, e.g.*, Oberlander's Case, 348 Mass. 1, 200 N.E.2d 268 (1964); Lambert's (Dependent's) Case, 364 Mass. 832, 304 N.W.2d 428 (1973) (back injury); psychosis; compensation

Sponatski.[18] In *Sponatski*, hot molten lead splashed into an employee's eye on September 17, 1913. Mr. Sponatski lost his sight in that eye and, after a short hospitalization, he jumped through a hospital window to his death on October 13, 1913.[19] The Massachusetts Industrial Accident Board stated its findings in this manner:

> We find and decide as a fact that the accident injured the eyesight of the deceased, caused the loss of his eye, caused a nervous and mental derangement, caused insane hallucinations and caused him, while mentally deranged, in a state of insanity and under the influence of hallucination, by an irresistible impulse, to commit suicide, and that the accident was the sole, direct and proximate cause of the suicide.[20]

The Board's findings were clearly supported by the medical evidence contained in the record but the decision to award compensation was appealed. Due to the progressive orientation of the Massachusetts Supreme Court, the Board ruling was affirmed. Consequently, suicide was first judicially recognized in the United States as a valid basis for recovery in workers' compensation cases.[21]

The rule formulated by the *Sponatski* court was enunciated by Chief Judge Rugg:

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awarded); Kahler v. Plochman, Inc., 85 N.J. 539, 428 A.2d 913 (1981) (severe back injury; pain medication; two suicide notes; compensation allowed); Kievsky v. United Neon Supply Corp., 21 N.J. Misc. 43, 30 A.2d 40 (1942) (severe acid burns; manic depressive psychosis; compensation allowed); Saunders v. Texas Employers' Ins. Ass'n, 526 S.W.2d 515 (Tex. 1975) (serious back and leg injury, benefits awarded where effects of injuries suffered by employee resulted in derangement and an uncontrollable impulse or delirium of frenzy causing an inability to resist the desire to commit suicide); Brenne v. Department of Indus., Labor & Human Relations, 38 Wis.2d 84, 156 N.W.2d 497 (1968) (circuit court must consider whether decedent, who received a severe electric shock and committed suicide approximately seven years later sustained a permanent psychic disability as a result of the injury).

Today the *Sponatski* rule is followed only in Iowa, Missouri, New Jersey, Oregon, Vermont, Washington, Ohio and Pennsylvania. The latter three jurisdictions have modified the *Sponatski* test in one way or another, but have not yet rejected this outdated mode of analysis in favor of the chain of causation test. *See* Burnett v. Industrial Comm'n, 87 Ohio App. 441, 93 N.E.2d 41 (1949); Commonwealth v. Makar, 53 Pa. Commw. 83, 416 A.2d 1155 (1980); Schwab v. Dept. of Labor & Indus., 76 Wash.2d 784, 459 P.2d 1 (1969). Minnesota abolished suicide as a compensable workers' compensation claim by statute in 1967 by amending its statute to include the assertion: "suicides are not compensable." However, that language was deleted by the Minnesota legislature in 1973. *See* MINN. REV. STAT. ANN. § 176.021 (West Cum. Supp. 1983). *See also* Schwartz v. Talmo, 295 Minn. 356, 205 N.W.2d 318, *appeal dismissed*, 414 U.S. 803 (1973). Indiana allowed recovery in at least one case, but failed to select either the *Sponatski* test or the chain of causation test. *See* Jackson Hill Coal & Coke Co. v. Slover, 102 Ind. App. 145, 199 N.E. 417 (1936) (severe burns, decedent shot himself thirty-seven times, compensation granted).

[18] 220 Mass. 526, 108 N.E. 466 (1915).

[19] *Id.* at 529, 108 N.E. at 467.

[20] *Id.*

[21] *See* LARSON'S WORKMEN'S COMPENSATION, *supra* note 2, § 36.20, at 6-119.

> [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 *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.[22]

The *Sponatski* court adopted a traditional proximate cause analysis and allowed recovery on the facts before it.[23] Many courts which have attempted

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[22] 220 Mass. at 530, 108 N.E. at 468 (emphasis added). The *Sponatski* court adopted this rule from its earlier decision of Daniels v. New York, N.H. & H.R. Co., 183 Mass. 393, 67 N.E. 424 (1903). In *Daniels*, the court applied this very same rule to determine whether or not recovery would be allowed when the wrongful act of a tort-feasor led to the injured party's subsequent suicide. *Id.* at 399-400, 67 N.E. at 627. *See also* RESTATEMENT (SECOND) OF TORTS § 455 (1977); the following language is pertinent:

> If the actor's negligent conduct so brings about the delirium or insanity of another as to make the actor liable for it, the actor is also liable for harm done by the other to himself while delirious or insane, if his delirium or insanity
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> (a) prevents him from realizing the nature of his act and the certainty or risk of harm involved therein, or
>
> (b) makes it impossible for him to resist an impulse caused by his insanity which deprives him of his capacity to govern his conduct in accordance with reason.

The illustration following this section demonstrates its application by describing these circumstances:

> A negligently injures B. The injuries cause insanity which takes the form of suicidal mania. While suffering in this condition, B locks his door to prevent interference and cuts his throat with a knife which he has secreted and sharpened for that purpose. A's negligence is the legal cause of B's death or other harm resulting from his cutting his throat.

Id. at illustration 3.

The application of RESTATEMENT (SECOND) OF TORTS § 455 supports the conclusion that suicide should be compensable in the workers' compensation setting. Nonetheless, the underlying humanitarian purposes of workers' compensation statutes make it clear that tort conceptualizations are not applicable per se. Since workers' compensation statutes seek to impose liability in a more liberal manner, the RESTATEMENT (SECOND) OF TORTS § 455 goes far beyond the principles necessary for judicial recognition of suicide as a valid workers' compensation injury when the act is preceded by a compensable injury.

[23] The *Sponatski* court adopted a tort analysis to allow compensation on the facts presented. *See supra* note 22 for a discussion of the tort principles underlying the *Sponatski* court's analysis. However, it is important to realize that tort law focuses upon "forseeability" and workers' compensation statutes focus upon "work-connectedness." LARSON'S WORKMEN'S COMPENSATION, *supra* note 2, § 2.20, at 5. The authors herein advocate the usage and adoption of a "but for" test of causation applied in connection with the chain of causation analysis. *See infra* note 71 for further discussion of the "but for" analysis in workers' compensation cases and *see infra* notes 59-92 and the accompanying text for a discussion of the chain of causation test and its application. *See also*

to apply the *Sponatski* test have failed to recognize that the test embodies more than a single concept. The first component is frequently labelled the "uncontrollable impulse" factor,[24] and the second component has been termed the "knowledge of the physical consequences" factor.[25] The "uncontrollable impulse" factor deals with the employee's mental capacity to commit a volitional act of suicide, while the "knowledge of the physical consequences" factor focuses on the employee's ability to appreciate the nature and purpose of the suicidal act.

A. *Uncontrollable Impulse*

The inclusion of the "uncontrollable impulse" factor in the *Sponatski* test was an attempt to identify a legally cognizable mental disease in the context of a post-compensable injury suicide.[26] Despite this laudable intention, the strict application of the "uncontrollable impulse" test effectively distorted the judicial focus in workers' compensation suicide cases.

Causation is the central issue in determining whether the employee's suicide is a compensable injury.[27] The *Sponatski* court was unwilling to allow compensation without emphasizing the stringent burden which would be placed upon any individual who attempted to demonstrate a direct line of causation among an original injury, a diseased mental state and a suicide. Nevertheless, many courts, in their applications of the *Sponatski* test, have failed to recognize that the "uncontrollable impulse" component is merely another way of emphasizing the claimant's burden of proving a causal link between the injury and the suicide.[28] Some of these misguided courts have claimed to require "objective" evidence of the existing mental illness, but

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Comment, *Workmen's Compensation—Insanity as Causal Link Between Injury and Suicide*, 45 IOWA L. REV. 669 (1960) [hereinafter cited as *Iowa Comment*].

[24] 220 Mass. at 520, 108 N.E. at 468. *See* Larson, *The Suicide Defense in Workmen's Compensation*, 23 BUFFALO L. REV. 43, 46 (1973-74) [hereinafter cited as Larson, *Suicide Defense*]; *Texas Tech Comment*, *supra* note 9, at 811.

[25] 220 Mass. at 520, 108 N.E. at 468. *See* Larson, *Suicide Defense*, *supra* note 24, at 46; *Texas Tech Comment*, *supra* note 9, at 811; *see also* LARSON'S WORKMEN'S COMPENSATION, *supra* note 2, § 36.30, at 6-54.

[26] 220 Mass. at 526, 180 N.E. at 466.

[27] *See generally* Larson, *Suicide Defense*, *supra* note 24, at 43; *Iowa Comment*, *supra* note 23, at 673.

[28] *See, e.g.*, Tetrault's Case, 278 Mass. 447, 180 N.E. 231 (1932) (compensation denied because employee stopped and said good-bye before jumping from a bridge to his death); Industrial Comm'n of Ohio v. Brubaker, 129 Ohio St. 617, 196 N.E. 409 (1935) (employee sustained hip injury; depression and financial difficulties set in; decedent waited until family was gone to church before shooting himself—recovery denied); Kasman v. Hillman Coal & Coke Co., 149 Pa. Super. 263, 27 A.2d 762 (1942) (recovery denied because injured employee was seen talking to neighbors shortly before going into a cornfield and shooting himself); Cubit v. Philadelphia, 138 Pa. Super. 325, 10 A.2d 853 (1940) (recovery denied even though worker who had suffered a severe concussion beat his head against a wall and then shot himself).

then have awarded benefits only when the employee supposedly demonstrated his or her mental illness by selecting a creative method of self-annihilation.[29] Thus, courts have awarded benefits when the employee has committed suicide by starvation,[30] by running a knife through his neck[31] or by slashing his wrists and immediately plunging the knife directly into his heart.[32] Those claimants who select a less bizarre method of suicide are less likely to recover.[33]

Although this may arguably be a logical application of the "uncontrollable impulse" portion of the *Sponatski* test, it ignores the less spectacular, but no less real, intrinsic pain which is often at the root of demented and irrational acts of suicide.[34] Judicial misinterpretation of the "uncontrollable impulse" test is readily observable, because a number of decisions have been rendered by courts claiming to apply the *Sponatski* analysis, but denying compensation awards even after finding that the decedent was "thoroughly demented and deranged [at the time of the suicidal act] as a result of his [original compensable] injury."[35]

The deficiency of a standard which hinges upon evidence of mental illness, but which fails to consider subjective evidence of pain, is self-evident.[36]

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[29] *See* Karlen v. Department of Labor & Indus., 41 Wash.2d 301, 249 P.2d 364 (1952). In *Karlen*, the decedent suffered a severe hand injury, was subsequently confined in a mental hospital with severe depression and committed suicide by placing his head directly into a moving power saw. *Id.* at 365.

See supra notes 51-53 and accompanying text for examples of creative methods of self-annihilation. *See also* Sinclair's Case, 248 Mass. 414, 143 N.E. 330 (1924) (suicide by starvation following a back injury); Olson v. F.I. Crane Lumber Co., 259 Minn. 248, 107 N.W.2d 223 (1960) (suicide by strangulation); Gasperin v. Consolidated Coal Co., 293 Pa. 589, 143 A. 187 (1928) (suicide by jumping from a sixth story hospital window). *See generally* Larson, *Suicide Defense*, *supra* note 24, at 59.

[30] Sinclair's Case, 248 Mass. 414, 143 N.E. 330 (1924).

[31] Kelly v. Sugarman, 5 A.D.2d 1023, 173 N.Y.S.2d 41 (1958).

[32] Anderson v. Armour & Co., 257 Minn. 281, 101 N.W.2d 435 (1960).

[33] *See* Annot., 15 A.L.R.3d 616, 645 (1967). *See generally* Graver Tank & Mfg. Co. v. Industrial Comm'n, 97 Ariz. 256, 399 P.2d 664 (1965); Harper v. Industrial Comm'n, 24 Ill.2d 103, 180 N.E.2d 480 (1962).

[34] *See Duke Comment*, *supra* note 5, at 620. *See also* C. MORGAN, PHYSIOLOGICAL PSYCHOLOGY 357 (1943) for an excellent discussion on pain's ability to affect normal thought processes.

[35] *See supra* notes 28-33 and the accompanying text for examples of this judicial misinterpretation.

[36] *See* HOROVITZ, WORKMEN'S COMPENSATION 134 (1944); 4 N.A.C.C.A. (A.T.L.A.) L.J. 19, 44 (1949). *See generally* A. BECK, DEPRESSION (1976); M. BLINDER, PSYCHIATRY IN THE EVERYDAY PRACTICE OF LAW (2d ed. 1982); N. FARBEROW & E. SCHNEIDMAN, THE CRY FOR HELP (1965); R. FIEVE, MOODSWING (1976); P. GIOVACCHINI, THE URGE TO DIE (1983); H. HENDIN, BLACK SUICIDE (1971); J. HILLMAN, SUICIDE AND THE SOUL (1964); L. KOLB, MODERN CLINICAL PSYCHIATRY (1977); R. LIFTON, THE BROKEN CONNECTION (1979); A. LUDWIG, PRINCIPLES OF CLINICAL PSYCHIATRY (1980); K. MENNINGER, MAN AGAINST HIMSELF (1938); MORGAN, PHYSIOLOGICAL PSYCHOLOGY (1943); E. SCHNEIDMAN, SUICIDOLOGY: CONTEMPORARY DEVELOPMENTS (1976); E. SCHNEIDMAN, DEATHS OF MAN (1974); Berger, *Drugs and Suicide in the United States*, 8 CLINICAL PHARMACOLOGY & THERAPEUTICS 219 (1967).

Pain can have far-reaching effects upon both the employee's mental stability and mental stamina[37] and should therefore be of prime importance in making judicial determinations about the cause of the suicidal act. When an individual is dominated by draconian levels of pain, clearly the "calm of death [is often] the sole concern [of the individual] and . . . resistance to a suicidal impulse is impossible."[38]

B. Knowledge of the Consequences

The second part of the *Sponatski* test is commonly identified as the knowledge of the consequences factor, and was explained by the Massachusetts court in the following manner:

> [W]here 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 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.[39]

This portion of the *Sponatski* test is essentially an analogue of the *M'Naghten* rule of criminal responsibility.[40] The application of the *M'Naghten* rule in criminal law cases serves to rule out responsibility when the accused commits a crime while suffering from a mental illness if he is unable to know the "nature and consequences" of his actions or in the alternative does not "know" right from wrong.[41] Yet the grafting of the *M'Naghten* rule onto workers' compensation jurisprudence by the *Sponatski* court was clearly unwarranted.[42] In criminal law, ultimate determinations of guilt or nonguilt are made by focusing upon the legal elements of responsibility. The four basic

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[37] *See, e.g.*, Small, *Gaffing at a Thing Called Cause: Medico-legal Conflicts in the Concept of Causation*, 31 TEX. L. REV. 630 (1953); *Duke Comment*, *supra* note 5, at 620; *Iowa Comment*, *supra* note 23, at 670.

[38] Recent cases, *Workmen's Compensation—Suicide Compensable Where Causal Connection To Injury*, 31 U. CIN. L. REV. 187, 194 (1962).

[39] 220 Mass. at 530, 108 N.E. at 468.

[40] The *M'Naghten* rule is originally derived from the early English decision in *M'Naghten's Case*, 8 Eng. Rep. 718 (H.L. 1843). In *M'Naghten*, the defendant shot and killed Edward Drummond, private secretary to Sir Robert Peel. However, his intention, which had been formed by an insane delusion, was to kill Peel whom he believed to be heading a conspiracy against him. At trial M'Naghten was held not guilty by reason of insanity. *Id. See, e.g.*, Zimmiski v. Lehigh Valley Coal Co., 200 Pa. Super. 524, 530, 189 A.2d 897, 900 (1963) (Flood, J., dissenting); Larson, *Suicide Defense*, *supra* note 24, at 47. *See* R. PERKINS & R. BOYCE, CRIMINAL LAW 958-60 (1982). This treatise provides an excellent discussion of the criminal law application of *M'Naghten*.

[41] *See* W. LAFAVE & A. SCOTT, JR., HANDBOOK ON CRIMINAL LAW 274-86 (1972). This treatise provides an excellent analysis of the utilization of the *M'Naghten* standard in criminal law cases.

[42] *See* Larson, *Suicide Defense*, *supra* note 24, at 47; *Note, Worker's Compensation—Evolving Standards for Compensability of Suicide—Kahler v. Plochman, Inc.*, 55 TEMP. L.Q. 194, 207 n. 105 (1982) [hereinafter cited as *Temple Note*]. It is pertinent to note that Massachusetts legislatively repealed the *Sponatski* holding in 1937, adopting a statutory rule of recovery for injury-related suicides. MASS. GEN. LAWS ANN. ch. 152, § 26A (West 1976).

goals universally propounded as justification for criminal punishment—deterrence, retribution, rehabilitation and restraint[43]—are thereby served.

Admittedly, responsibility as classically defined is properly the focus in criminal law, but *causation*, not intent, should be at the core of each and every workers' compensation analysis. Since the "knowledge of consequences" prong of *Sponatski* inevitably leads courts into an analysis of irrelevant issues of volition and intention," it is in direct conflict with the public policy considerations which underlie workers' compensation statutes.[44] The extraction of a norm from one system of jurisprudence (the criminal law) and its importation into another system designed to deal with quite different problems (workers' compensation) is always a behavior fraught with peril—if not freighted down with the absolute potential for disaster.

The *M'Naghten* rule, like that of *Sponatski*, is rooted in an antiquated model of the mind[45] which has long since been rejected by modern psychiatric science.[46] Courts using the obsolete *Sponatski* model erringly focus upon cognition,[47] allowing the term "know" to become the determinative element in making decisions as to whether or not an award should be granted. Both the practitioner and his expert certainly understand that "know" refers to cognition, the faculty of knowing. The *Sponatski* analysis, by focusing upon the cognitive faculty of the mind, produces major distortions in the information held critical to the adjudication of these cases.[48] The flaws inherent in the *Sponatski* analysis can be readily ascertained by comparing the inconsistent results reached by courts applying similar analyses. Benefits have been awarded to a worker who committed suicide by slitting his throat,[49] but benefits were denied to an employee who waved good-bye to his family before jumping off a bridge.[50] Applying *Sponatski*, the obvious justification for the

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[43] *See, e.g.*, People v. Burton, 6 Cal.3d 375, 388, 491 P.2d 793, 801, 99 Cal. Rptr. 1, 9 (1971); People v. Washington, 62 Cal.2d 777, 781, 44 Cal. Rptr. 442, 445, 402 P.2d 130, 133 (1965); Williams v. State, 542 P.2d 554, 586 (Okla. Crim. App. 1975), *modified*, 428 U.S. 907 (1976).

[44] See *infra* note 71 for a discussion of public policy considerations which prompted the adoption of workers' compensation statutes. *See, e.g., Texas Tech Comment, supra* note 9, at 820; *Duke Comment, supra* note 5, at 622; LARSON'S WORKMEN'S COMPENSATION, *supra* note 2, § 2.20, at 5-9.

[45] *See, e.g.*, Durham v. U.S., 214 F.2d 862 (D.C. Cir. 1954).

[46] The antiquated model of *Sponatski* focuses on cognition which is basic in the two-pronged *M'Naghten* test in criminal law. Neuroscientists, psychopharmacologists, psychologists and many courts, legislatures and scholars have rejected *M'Naghten* approach in the realm of criminal law. See *infra* notes 55-58 and accompanying text for detailed discussion of "cognition" and its application by courts following the lead of the Massachusetts court in *Sponatski*.

[47] See *infra* notes 55-58 and accompanying text for a detailed discussion of cognition.

[48] *See, e.g.*, Zimmiski v. Lehigh Valley Coal Co., 200 Pa. Super. 524, 528, 189 A.2d 897, 900 (1963); *Temple Note, supra* note 42, at 199.

[49] Kelly v. Sugarman, 5 A.D.2d 1023, 173 N.Y.S.2d 41 (1958). *But see* Mershon v. Missouri Public Service Corp., 359 Mo. 257, 221 S.W.2d 165 (1949).

[50] Tetrault's Case, 278 Mass. 447, 180 N.E. 231 (1932). *See* Nohe v. Sheffield Farms Co., 4

differing results is that in the latter case the employee took the time to give expression to his "uncontrollable impulse"[51] and therefore must have known the consequences of his actions.[52] Similarly, a court held that benefits should be denied to an employee who drank lye after developing a serious infection in the ball of his foot from stepping on a nail at work, merely because the decedent left his wife an explanatory note and waited until she was out of the house to commit the act.[53] These courts create a jurisprudential Catch-22: the claimant's strongest evidence of the existence of an uncontrollable impulse tends to benefit the employer by implying that the employee had "knowledge of the consequences" of his act, thereby foreclosing recovery under the latter portion of the *Sponatski* test.[54]

Modern psychiatric insights[55] into the mind reveal the existence of a field

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A.D.2d 720, 163 N.Y.S.2d 455 (1957); Speece v. Industrial Comm'n, 46 Ohio Law Abs. 453, 70 N.E.2d 387 (1945); Gasperin v. Consolidation Coal Co., 293 Pa. 589, 143 A. 187 (1928). *But see* Jung v. Industrial Comm'n, 242 Wisc. 179, 7 N.W.2d 416 (1943).

[51] See *supra* notes 26-38 and accompanying text for an extended discussion of the uncontrollable impulse test.

[52] This rationale is so absurd that it merits only brief explanation. Courts utilizing this mode of analysis do not deny the existence of an "uncontrollable impulse," but focus upon the individual's knowledge that he was afflicted with an "uncontrollable impulse" and deny recovery because the employee knew that he had an "uncontrollable impulse."

[53] Jones v. Traders & Gen. Ins. Co., 140 Tex. 599, 169 S.W.2d 160 (1943). Many courts also seize upon suicide notes to deny compensation. In essence, these courts characterize the suicidal act as a rational and volitional act because of the foresight which the decedent supposedly displayed by leaving the suicide note. *See* Widdis v. Collingdale Millwork Co., 169 Pa. Super. 612, 84 A.2d 259 (1951). *But see* Terminal Shipping Co. v. Traynor, 243 F. Supp. 915 (D.C. Md. 1965); Harper v. Industrial Comm'n. 24 Ill.2d 103, 180 N.E.2d 480 (1962); *In re* Sponatski, 220 Mass. 526, 108 N.E. 466 (1915); Kahler v. Plochman, Inc., 85 N.J. 539, 428 A.2d 913 (1981). Conversely, the nonexistence of a suicide note has been utilized to demonstrate "a lack of premeditation and a possible irresistable impulse." Annot., 15 A.L.R.2d 616, 643, citing in support thereof, Schofield v. White, 250 Iowa 571, 95 N.W.2d 40 (1959); and Blasczak v. Crown Cork & Seal Co., 193 Pa. Super. 422, 165 A.2d 128 (1960). *See also* Schneidman, *Suicide Notes Reconsidered*, 36 PSYCH. 379, 380 (1973); Osgood and Walker, Motivation and Language Behavior: A Content Analysis of Suicide Notes, 59 J. ABNORMAL SOC. PSYCH. 58 (1959).

[54] Under this fallacious line of reasoning if the individual initially evidences knowledge of his suicidal impulses by his resistance, but then ultimately resigns himself to death, the courts will deny recovery unless the claimant selects a bizarre mode of suicide which can be interpreted to negate "knowledge." For example, compensation was not allowed in the following cases: Konazewski v. Erie R.R., 132 N.J.L. 424, 41 A.2d 130 (1945), *aff'd*, 133 N.J.L. 557, 45 A.2d 315 (1946), *overruled sub. nom.*, Kahler v. Plochman, 85 N.J. 539, 428 A.2d 913 (1981) (*Kanazewski* court held no uncontrollable impulse where decedent hanged himself eight weeks after head injury); Industrial Comm'n v. Brubaker, 129 Ohio St. 617, 196 N.E. 409 (1935) (no uncontrollable impulse found when decedent waited until one week after a hip injury to commit suicide); Kasmen v. Hillman Coal & Coke Co., 149 Pa. Super. 263, 27 A.2d 762 (1942) (recovery denied because decedent talked to neighbors before walking into a cornfield to shoot himself, even though his actions were attributable to suffering extreme pain). *See* LARSON'S WORKMEN'S COMPENSATION, *supra* note 2, at § 36.21.

[55] *See* Avery v. City of Middletown, 40 A.D.2d 568, 334 N.Y.S.2d 708 (App. Div. 1972), *rev'd*, 33 N.Y.2d 771, 305 N.E.2d 492, 350 N.Y.S.2d 412 (1973) (adopting lower court's dissent); Reinstein

of forces which can best be described as an incredibly complex environment of interlocking biological computers.[56] The so-called faculty of "knowing," focused upon by courts utilizing the *Sponatski* analysis, is only a single function in a system capable of a very significant number of functions. The human mind is not dominated by cognition; there is no little cognitive man standing at the top of the cerebral cortex who is in charge of the multiplicity of biological computers which comprise our minds.[57] From a modern perspective, the *Sponatski* analysis appears to be founded upon a nonrational model of the human mind. This made it possible for the court in *Sponatski* to speak of suicide phenomenon "as 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. . . ."[58] No one who understands modern psychiatric science—even if his or her understanding is only rudimentary—can reconcile the *Sponatski* court's assertion that the suicidal act is a voluntary willful choice even though the individual is dominated and ruled by a disordered mind.

II. THE CHAIN OF CAUSATION TEST

A. *Generally*

The chain of causation test has now been adopted by a majority of jurisdictions,[59] bringing greater fairness and consistency to the adjudication of

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v. Nedola, 39 A.D.2d 369, 334 N.Y.S.2d 488 (App. Div. 1972), *aff'd*, 33 N.Y.2d 589, 301 N.E.2d 438, 347 N.Y.S.2d 455 (1973); *See also* A. BECK, DEPRESSION (1976); M. BLINDER, PSYCHIATRY IN THE EVERYDAY PRACTICE OF LAW (2d ed. 1982); N. FARBEROW & E. SCHNEIDMAN, THE CRY FOR HELP (1965); R. FIEVE, MOODSWING (1976): H. HENDIN, BLACK SUICIDE (1971); J. HILLMAN, SUICIDE AND THE SOUL (1964); L. KOLB, MODERN CLINICAL PSYCHIATRY (1977); R. LIFTON, THE BROKEN CONNECTION (1979); A. LUDWIG, PRINCIPLES OF CLINICAL PSYCHIATRY (1980); K. MENNINGER, MAN AGAINST HIMSELF (1938): Berger, *Drugs and Suicide in the United States*, 8 CLINICAL PHARMACOLOGY & THERAPEUTICS 219 (1967).

[56] *See* R. RESTAK, THE BRAIN: THE LAST FRONTIER 52 (1980).

[57] Holloway v. U.S., 148 F.2d 665, 667 (D.C. Cir. 1945), *cert. denied*, 334 U.S. 852 (1948).

[58] 220 Mass. at 530, 108 N.E. at 468.

[59] *See* LARSON'S WORKMEN'S COMPENSATION, *supra* note 2, § 36.30 at 6-132. *See generally* Findley v. Industrial Comm'n of Ariz., 135 Ariz. 273, 660 P.2d 874 (1983); Reynolds Metals Co. v. Industrial Comm'n, 119 Ariz. 566, 582 P.2d 656 (1978); Wood v. Industrial Comm'n of Ariz., 108 Ariz. 50, 492 P.2d 1157 (1972); Rose v. Industrial Comm'n of Arizona, 8 Ariz. App. 182, 444 P.2d 739 (1968); Baxter v. Industrial Comm'n, 6 Ariz. App. 156, 430 P.2d 735 (1967); Graver Tank & Mfg. Co. v. Industrial Comm'n, 97 Ariz. 256, 399 P.2d 664 (1965); Donovan v. Workers' Comp. App. Bd., 138 Cal. App. 3d 323, 187 Cal. Rptr. 869 (1982); Redmon v. Workmen's Comp. App. Bd., 36 Cal. App. 3d 302, 111 Cal. Rptr. 530 (1973); Beauchamp v. Workmen's Comp. App. Bd., 259 Cal. App. 2d 147, 66 Cal. Rptr. 352 (1968); Burnight v. Industrial Accident Comm'n, 181 Cal. App. 2d 816, 5 Cal. Rptr. 786 (1960); Wilder v. Russell Library Co., 107 Conn. 56, 139 A. 644 (1927); Delaware Tire Center v. Fox, 401 A.2d 97 (Del. Super. Ct. 1979), *aff'd*, 411 A.2d 606 (Del. 1980); Jones v. Leon County Health Dept., 335 So. 2d 269 (Fla. 1976); Whitehead v. Keene Roofing Co., 43 So. 2d 464 (Fla. 1949); City of Tampa v. Scott, 397 So. 2d 1220 (Fla. App. 1981); City of Streator v. Industrial

claims for workers' compensation death benefits when a suicide results from a psychiatric disorder brought about by a compensable on-the-job injury. Unlike the *Sponatski* test, chain of causation analysis ignores such unimportant factors as the employee's sudden impulse to commit the suicidal act,[60] his "knowledge of the consequences"[61] and the chosen mode of suicide.[62] Instead, it properly focuses on the true issue: The existence or nonexistence of a direct causal relationship among an on-the-job injury, a subsequent psychiatric disorder and the suicide.[63]

Increasing scientific understanding of mental illness has allowed courts in the late twentieth century to abandon the antiquated *M'Naghten* rule in the criminal law context.[64] Likewise, in workers' compensation cases, courts can now reject the outdated analysis, which of necessity focused upon manifestations of suicidal impulses, since internal causal chains can increasingly be revealed by expert testimony. For instance, the California District Court of Appeals, faced with a volitional act of suicide by an employee afflicted with acute psychosis and schizophrenia, could not have revealed the following level of psychological sophistication in an earlier day:

> It is unreasonable and unrealistic to hold that suicide occuring when the employee is [in a state of psychosis] is not the result of the industrial injury when the manic depressive state is. If suicide is a result which may be expected from a manic depressive condition, how can such a result be said to be intentionally self-inflicted, even though the person may know what he is doing and its results? The manic depressive condition provides the irresistible impulse.

Comm'n, 92 Ill. 2d 353, 442 N.E.2d 497 (Ill. 1982); County of Cook v. Industrial Comm'n, 87 Ill. 2d 204, 429 N.E.2d 865 (1981); Harper v. Industrial Comm'n, 24 Ill. 2d 103, 180 N.E.2d 480 (1962); *In re* Fitzgibbons' Case, 374 Mass. 633, 373 N.E.2d 1174 (1978); Lambert's (Dependent's) Case, 364 Mass. 832, 304 N.E.2d 428 (1973); Oberlander's Case, 348 Mass. 1, 200 N.E.2d 268 (1964); Sinclair's Case, 248 Mass. 414, 143 N.E. 330 (1924); Trombley v. Coldwater State Home & Training School, 366 Mich. 649, 115 N.W.2d 561 (1962); Lopucki v. Ford Motor Co., 109 Mich. App. 231, 311 N.W.2d 338 (1981) ("subjective approach" variation); Prentiss Truck & Tractor Co. v. Spencer, 228 Miss. 66, 87 So. 2d 272 (1956); Petty v. Associated Transp., Inc., 276 N.C. 417, 173 S.E.2d 321 (1970); Thompson v. Lenoir Transfer Co., 48 N.C. App. 47, 268 S.E.2d 534, *cert. denied*, 301 N.C. 405, 273 S.E.2d 450 (1980); Kahler v. Plochman, 85 N.J. 539, 428 A.2d 913 (1981); Kievsky v. United Neon Supply Corp., 21 N.J. Misc. 43, 30 A.2d 40 (1942); Saunders v. Texas Employers' Ins. Ass'n, 526 S.W.2d 515 (Tex. 1975); Brenne v. Department of Indus., Labor & Human Relations, 38 Wis. 2d 84, 156 N.W.2d 497 (1968). Maryland implicitly approved the chain of causation analysis in Baber v. John C. Knipp & Sons, 164 Md. 55, 163 A. 862 (1933).

[60] *See supra* notes 26-38 and accompanying text for a discussion of the "uncontrollable impulse" standard.

[61] *See supra* notes 39-58 and accompanying text for a discussion of "knowledge of the consequences" analysis.

[62] *See supra* notes 50-53 and accompanying text for an analysis of judicial decisions allowing benefits merely because a bizarre mode of suicide was chosen.

[63] *See Clev.-Mar. Note*, *supra* note 7, at 33.

[64] See *supra* notes 40-47 and accompanying text for a discussion of why the *M'Naghten* rule cannot be integrated into workers' compensation.

> Mere realization of the nature and effect of the suicidal act cannot be controlling.[65]

Such an analysis surpasses the simplistic truisms of the *Sponatski* analysis.[66]

Furthermore, as our subsequent discussion will more fully develop, modern psychiatric theory has revealed that pain, such as that which may result from an on-the-job injury, can indeed be so intense and unbearable[67] that suicide is not an altogether irrational option:[68]

> If the sole motivation controlling the will of the employee when he knowingly decides to kill himself is the pain and despair caused by the injury, and if the will itself is deranged and disordered by these consequences of the injury, then it seems wrong to say that this exercise of will is '*independent,' or that it breaks the chain of causation.* Rather, it seems to be the direct line of causation.[69]

Yet, religious and cultural values tend to intrude into this analysis, stigmatizing suicide as an "inherently evil impulse" despite increasing awareness of the nature and causes of suicide within the psychiatric community.[70] This may help to explain why some judges, even when armed with the analytical tools of the chain of causation test, have attempted to characterize the act of suicide itself as an independent intervening cause.[71]

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[65] Burnight v. Industrial Accident Comm'n, 181 Cal. App. 2d 816, 827-28, 5 Cal. Rptr. 786, 794 (1960). The court also noted that:

> Modern psychiatry knows that a manic depressive condition operates to break down rational mental processes, placing the person afflicted in a mental state in which death actually seems more attractive than living, and in which he may not only have a conscious volition to produce death, but be eager to do so.

Id. at 826, 5 Cal. Rptr. at 793.

[66] *See supra* notes 18-58 and accompanying text for a discussion for the *Sponatski* test.

[67] *See infra* notes 93-106 and accompanying text for an evaluation of suicide in psychiatric terms. *See generally* Larson, *Mental and Nervous Injury in Workmen's Compensation*, 23 VAND. L. REV. 1243 (1970).

[68] *Duke Comment, supra* note 5, at 620.

[69] Burnight v. Industrial Accident Comm'n, 181 Cal. App. 2d at 826, 5 Cal. Rptr. at 793 (emphasis added).

[70] *See* K. MENNINGER, MAN AGAINST HIMSELF (1938), and the authorities cited in *supra* note 7.

[71] Compensation was denied in the following cases. Reynolds Metal Co. v. Industrial Comm'n of Ariz., 119 Ariz. 566, 582 P.2d 656 (1978); Lopez v. Kennecotte Copper Corp., 71 Ariz. 212, 225 P.2d 702 (1950); Vandagriff v. Workmen's Comp. App. Bd., 265 Cal. App. 2d 854, 71 Cal. Rptr. 630 (1968); County of Cook v. Industrial Comm'n, 87 Ill. 2d 204, 429 N.E.2d 865 (1981); Henry v. Schenk Mechanical Contractors, Inc., 169 Ind. App. 178, 346 N.E.2d 616 (1976); Brown v. American Steel & Wire Co., 43 Ind. App. 560, 88 N.E. 80 (1909); Soileau v. Travelers Ins. Co., 198 So. 2d 543 (La. 1967); *In re* Oberlander's Case, 348 Mass. 1, 200 N.E.2d 268 (1964); Konazewska v. Erie R.R. Co., 132 N.J.L. 424, 41 A.2d 130 (1945), *aff'd*, 135 N.J.L. 557, 45 A.2d 315 (1945), *overruled sub nom.*, Kahle v. Plochman, 85 N.J. 539, 428 A.2d 913 (1981); Kazazian v. Segan, 14 N.J. Misc. 78, 182 A. 351 (1936); Hyder v. New York State Dept. of Mental Hygiene, 48 A.D.2d 948, 369 N.Y.S.2d 29 (App. Div. 1975), *aff'd*, 39 N.Y.2d 856, 352 N.E.2d 131, 386 N.Y.S.2d 214 (1976); Frazoni v. Loew's Theatre Realty Co., 22 A.D.2d 741, 253 N.Y.S.2d 505 (App. Div. 1964); Consula v. Town of Harrison, 16

A.D.2d 848, 227 N.Y.S.2d 585 (App. Div. 1961); Vernum v. State Univ. of N.Y., 4 A.D.2d 722, 163 N.Y.S.2d 727 (App. Div. 1957); Seal v. Effrom Fuel Oil Co., 284 A.D. 795, 135 N.Y.S.2d 231 (App. Div. 1954); Palmer v. Redman, 281 A.D. 723, 117 N.Y.S.2d 708 (App. Div. 1952); Joseph v. United Kimono Co., 194 A.D. 568, 185 N.Y.S. 700 (1921); Babb v. GTE Sylvania, Inc., 417 So. 2d 545 (Miss. 1982); Mershon v. Missouri Pub. Serv. Corp., 359 Mo. 257, 221 S.W.2d 165 (1949); Hannon v. Brandeis & Sons, Inc., 186 Neb. 122, 181 N.W.2d 253 (1970); Industrial Comm'n of Ohio v. Brubaker, 129 Ohio 617, 196 N.E. 409 (1935); White v. Kitty Clover Co., 409 P.2d 637 (Okla. 1965); Jones v. Cascade Wood Products, 21 Or. App. 86, 533 P.2d 1399 (1975); Bethlehem Steel Corp. v. Workmen's Comp. App. Bd., 65 Pa. Commw. 59, 441 A.2d 518 (1982); Westinghouse Electric Corp. v. Workmen's Comp. App. Bd., 489 Pa. 485, 414 A.2d 625 (1980); Berdy v. Glen Alden Corp., 202 Pa. Super 525, 198 A.2d 329 (1964); Widdis v. Collingdale Millwork Co., 169 Pa. Super. 612, 84 A.2d 259 (1951); Kasman v. Hillman Coal & Coke Co., 149 Pa. Super. 263, 27 A.2d 762 (1942); Shewczuk v. Conrexeville Mfg. Co., 53 R.I. 223, 165 A. 444 (1933); Mitchem v. Fiske-Carter Constr. Co., 293 S.E.2d 701 (S.C. 1982); Veloz v. Fidelity-Union Cas. Co., 8 S.W.2d 205 (Tex. Civ. App. 1928); Barber v. Industrial Comm'n, 241 Wis. 462, 6 N.W.2d 199 (1942); A. O. Smith Corp. v. Industrial Comm'n, 264 Wis. 510, 59 N.W.2d 471 (1953).

The inherent difficulties which arise from using such an analysis are apparent. Courts which apply an independent intervening cause analysis in workers' compensation cases fail to comprehend the policy differences between tort concepts and those of workers' compensation. In tort cases, liability is imposed on the basis of fault, while in workers' compensation liability is imposed as a humanitarian measure. *See* LARSON'S WORKMEN'S COMPENSATION, *supra* note 2, § 2.20 at 7. Thus, courts must apply analyses which will properly reflect the underlying policies of these two divergent areas of the law. In tort law, "proximate cause" analysis is applied in making determinations whether one has breached a duty to another and to establish societal limits on the imposition of liability. However, in workers' compensation cases, a "but for" analysis should be utilized when making the ultimate determination of whether a causal chain exists between the original compensable injury, the resulting mental disease or defect, and the subsequent suicidal act. *See, e.g.*, Tucson Rapid Trans. Co. v. Tocci, 3 Ariz. App. 330, 414 P.2d 179 (1966); Barber v. Industrial Comm'n, 241 Wis. 462, 6 N.W.2d 199 (1942) (Judge Fowler, J., dissenting); Wilder v. Russell Library Co., 107 Conn. 56, 139 A. 644 (1927).

Proximate causation in the negligence context is in many ways a combination of two separate and distinct concerns: The factual existence of a causal relationship and public policy concerns about the scope and extent of the individual defendant's liability. Likewise, in the workers' compensation context, the use of the proximate causation concept implies two separate and distinct concerns: The factual existence of a causal relationship and the public policy concerns which disfavor suicide. The use of this concept in the workers' compensation context is thus somewhat suspect, because the public policies disfavoring suicide tend to be a combination of factors, including the assumed sanctity of life and a latent fear that a worker might commit suicide in order to provide financial benefits to his family. Disallowing workers' compensation claims in cases of suicide does not advance the former concern, and doubtless has little relevance to the latter.

Indeed, it is the existence of the additional required factors in the workers' compensation—the compensable injury and the development of a mental disease or defect—which distinguishes the workers' compensation policy considerations from commercial life insurance. Benefits are properly denied to the insured who has purchased life insurance and then takes his own life. The simplicity in such a scheme makes the possibilities for fraud obvious. *Temple Note*, *supra* note 42, at 207 n. 109. The workers' compensation claimant, however, cannot so readily structure the situation. The claimant must sustain an injury in the course of employment and that injury must be compensable. In addition, he must develop a mental disease or defect and the suicidal act must be the direct result of the work-related injury.

The New York rule is a modified chain of causation approach. Under this test the claimant is required to show "genuine brain mental derangement, as distinguished from mere melancholy, discouragement, or other sane conditions." LARSON'S WORKMEN'S COMPENSATION, *supra* note 2, §

B. *Reaction to Theories of Independent Intervening Cause*

Judicial distaste for allowing compensation for suicide is strong,[72] so it is not surprising that the independent intervening cause theory arose. Utilization of this analysis can operate to deny benefits where an otherwise unbroken chain of causation exists. Assume, for example, that an employee falls from a ladder while operating a tire changer.[73] The injuries sustained include a broken arm, severe contusions and disfigurement of the neck, left shoulder and left eye. The immeasurable pain leaves the employee in a state of "exaggerated depression" and unable to return to work.[74] Despondent over his injuries and worsening financial situation, the employee takes an overdose of drugs to end his miserable existence. Although the causal relationship between the injury, the initial condition and the suicide is obvious, a court employing the independent intervening cause analysis could deny benefits by asserting that an act of suicide inherently breaks the chain of causation.[75] Clearly the invocation of this theory involves an *a priori* assumption by the court which is neither logically compelled nor supported by established facts.[76]

If judicial limits are to be placed upon suicide as a compensable workers' compensation claim, the boundaries should be established, not through the use of such sophistry as "independent intervening cause," but by applying traditional notions of causation.[77] An orthodox "but for" analysis of causation

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36.30, at 6-137. Many of the cases applying the New York rule would seemingly require actual evidence of direct physical damage to the brain before allowing recovery. The fallacy of the New York rule is that it focuses upon outdated concepts of sanity, instead of realities associated with psychiatric disorders. The only states which currently subscribe to this rule are New York and Louisiana. Both of these states will probably discard the New York rule in favor of a more appropriate chain of causation test. Evidence to support this conclusion is found in the recent case *McCarville v. Williams, Stevens, McCarville & Frizzell, P.C.*, 84 A.D.2d 622, 444 N.Y.2d 495 (1981). In *McCarville*, the claimant had been an attorney with personal problems who also felt as if he had made a mistake at work and might be forced to disassociate himself from his law firm. Compensation was awarded even though no direct physical injury was shown. Such an award is indicative of the chain of causation analysis and not the New York rule.

[72] The intent of this hypothetical case is to demonstrate the ludicrous result which could occur when courts utilize the independent intervening cause analysis.

[73] The facts are taken from Delaware Tire Center v. Fox, 401 A.2d 97 (Del. Super. Ct. 1979), *aff'd*, 411 A.2d 606 (1980), where the court granted compensation.

[74] *See generally Iowa Comment, supra* note 23, at 676-77.

[75] *See* LARSON'S WORKMEN'S COMPENSATION *supra* note 2, § 36.30 at 6-58; *Iowa Comment, supra* note 34, 670; *Duke Comment, supra* note 34, at 619; *Larson, Suicide Defense, supra* note 24 at 43.

[76] In Barber v. Industrial Comm'n, 241 Wis. 462, 467, 6 N.W.2d 199, 202, Judge Fowler in his dissenting opinion stated that, "[a]n intervening cause is one occurring entirely independent of a prior cause. When a first cause produces a second cause that produces a result, the first cause is the cause of that result."

[77] In Pound, *Interests of Personality*, 28 HARV. L. REV. 343, 345 (1915), the distinguished

would permit a court to utilize its experience and expertise in a nonarbitrary fashion. Moreover, this approach to causation is congruent with other areas of law which employ proximate cause as the all-purpose limiting factor, rather than hypothesizing independent intervening causes.

C. *Modern Application of the Chain of Causation Test*

The traditional formulation of the chain of causation test was developed by the Florida Supreme Court in *Whitehead v. Keene Roofing Co.*[78] Walter Whitehead fell from a roof while working and sustained "serious bodily injuries,"[79] including nerve damage in his foot and shoulder, unbearable pain in his neck, back and head and paralysis in his arm.[80] Ultimately, Mr. Whitehead committed suicide and the trial court denied compensation.[81] The trial court's opinion contained elements of the old *Sponatski* test, including the observation that at the time of the suicide, the employee's "mental condition was such that his intention primarily to take his life was wilful."[82] The court, swayed by the policy considerations underpinning the enactment of workers' compensation statutes,[83] reversed the decision of the trial court and awarded death benefits despite the volitional act of suicide.[84] The remaining opinion tracked what is today known as the chain of causation test.

The West Virginia Supreme Court of Appeals has also given support to the application of the chain of causation test in workers' compensation cases. In *Hall v. State Workmen's Compensation Commissioner*, the employee contracted occupational pneumoconiosis while on the job.[85] Mr. Hall eventually developed a chronic lung disease requiring medication and rendering him un-

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author opined that "the practices of jurists have often been sounder than their theories have been."

The Florida Supreme Court observed that while suicide is always an intervening act, it is not always an intervening cause. Whitehead v. Keene Roofing Co., 43 So. 2d 464 (1949); *Iowa Comment, supra* note 23, at 673 n.17; *Temple Note, supra* note 42, at 194.

[78] 43 So. 2d 464 (Fla. 1949).

[79] *Id.* at 464.

[80] *Id.* at 465.

[81] This denial was based upon Florida's statutory bar against awarding benefits for intentionally self-inflicted injuries. FLA. STAT. ANN. § 440.09(3) (West 1981). *See supra* note 11 for discussion of comparable statutory bars in both the state and federal workers' compensation systems.

[82] 43 So. 2d at 465.

[83] Legislative relief was originally enacted as a humanitarian measure to provide an effective means of financial recovery for employees who were injured on the job. Ideally, the system should function by imposing liability on employers in a manner similar to that imposed upon sellers of goods under strict products liability theory. *See, e.g., Duke Comment, supra* note 5, at 622. *Temple Case Note supra* note 42, at 195. The financial burden is borne by the employer as a cost of doing business, but is ultimately passed on to society. The imposition of absolute liability recognizes that negligence concepts are inapplicable in workers' compensation law.

[84] 43 So. 2d at 466.

[85] 303 S.E.2d 726 (W. Va. 1983).

able to sleep in his bed during the last four years of his life due to his constant fear that he would choke to death.[86] The persistent pain caused Mr. Hall to develop severe anxiety and depression.[87] Expert testimony was introduced demonstrating that Mr. Hall became physically and emotionally unable to cope with the constant pain and ultimately shot himself in the head.[88] The West Virginia Workmen's Compensation Commissioner denied benefits, stating that "Mr. Hall's death was not due to occupational pneumoconiosis, nor was occupational pneumoconiosis a major contributing factor to his death . . . ."[89] The West Virginia Supreme Court of Appeals remanded the case, adopting and approving the chain of causation analysis.[90] The court determined that "an employee's suicide which arises in the course of and results from covered employment is compensable"[91] if:

> (1) the employee sustained an injury which itself arose in the course of and resulted from covered employment, and (2) without that injury the employee would not have developed a mental disorder of such degree as to impair the employee's normal and rational judgment, and (3) without that mental disorder the employee would not have committed suicide.[92]

III. PSYCHIATRY AND THE CHAIN OF CAUSATION ANALYSIS

The consensus view of modern psychiatric science on suicide is that "[n]o one evolves so completely as to be entirely free from self-destructive tendencies."[93] Psychiatrist Martin Blinder has stated that when these "self-destructive tendencies" existing within the individual are amplified by a work-related injury, the resulting "[p]ain and suffering . . . can be so severe as to cause or contribute to suicide by the victim."[94] The psychiatric realities encountered in suicide cases can best be understood by considering a vignette which demonstrates how job-related trauma can produce suicide.

Suppose, for example, that a fifty-five year-old worker in a steel mill falls approximately five feet while attempting to repair a piece of machinery. As a

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[86] Brief for Appellant, at 3-4, Hall v. State Workmen's Comp. Comm'r, 303 S.E.2d 726 (W. Va. 1983).

[87] *Id.* at 5.

[88] Brief for Appellee, at 1, Hall v. State Workmen's Comp. Comm'r, 303 S.E.2d 726 (W. Va. 1983).

[89] 303 S.E.2d at 727.

[90] *Id.*

[91] *Id.* at 730-31. The court implicitly made a determination that suicide is not a willful act when the chain of causation analysis is satisfied. *See supra* note 11 for the pertinent text of the West Virginia statutory bar against granting compensation for intentional acts.

[92] *Id.*

[93] M. BLINDER, PSYCHIATRY IN THE EVERYDAY PRACTICE OF LAW 179 (2d Ed. 1982). *See also* Lasky, *Psychiatry and California Worker's Compensation Laws: A Threat and a Challenge*, 17 CAL. W. L. REV. 1, 22-24 (1980); A. BECK, H. RESNICK & D. LETTIERI, THE PREDICTION OF SUICIDE (1974).

[94] K. MENNINGER, MAN AGAINST HIMSELF 6 (1938).

direct result of the fall, the employee sustains a ruptured cervical disc and fractures one vertebrae, resulting in significant cervical instability, soft tissue damage, compression of the spinal cord, severe nerve root compression, and ligament damage in the cervical area. He experiences constant pain. The possibility of permanent paralysis requires that surgery be performed. Successful stabilization of the spine is accomplished by surgery, but the injured employee continues to experience severe headaches and neck pain requiring the administration of prescription medication. Additionally, the employee is unable to return to his former employment due to the existence of permanent neurological damage which would be exacerbated by the performance of his job related duties. Prior to the fall, the injured employee was an active, optimistic, energetic family man who engaged in racquetball and who considered himself a sports enthusiast. Now, as a direct result of his on-the-job injury, he is unable to work and is no longer physically capable of participating in sports. Depression, melancholia, and pain permeate his very existence and cause major personality changes to occur. Plagued by fatigue, anxiety, and feelings of worthlessness, the injured employee suffers from insomnia and often becomes irritable. Periodically he weeps uncontrollably. Furthermore, the employee loses almost all interest in sex, complains about his inability to concentrate, feels incapable of finishing anything he begins and frequently sits, staring into space for long periods of time.[95] Ultimately, his self-destructive tendencies are triggered by a psychiatric disorder, and death becomes an obsession. Almost fourteen months after the original injury, he drafts a suicide note, loads his gun and shoots himself in the head. Thus, a tragic downward drama results in the demise of a formerly productive individual.

A. *A Technical and Practical Approach for the Psychiatric Expert*

The attorney, of course, can observe and delineate the sequence of factual events which occurred in the vignette. Nevertheless, the presentation of a good claim or defense will require expert psychiatric analysis,[96] for it is the

[95] The description of the disintegration of this worker's personality is premised on the DIAGNOSTIC MANUAL OF MENTAL DISORDERS 210-11 (3d ed. 1980), which is published by the American Psychiatric Association.

[96] Occasionally, a case may arise which seemingly would not require expert testimony to establish the causal chain of events; however, the practitioner would be ill-advised to proceed without first consulting an expert. *See, e.g.*, Vernum v. State Univ. of N.Y., 4 A.D.2d 722, 163 N.Y.S.2d 727 (1957) (compensation denied due to claimant's failure to demonstrate a causal link between the mental illness and the suicide); Palmer v. Redman, 281 A.D. 723, 117 N.Y.S.2d 708 (App. Div. 1952). *See generally*, LARSON'S WORKMEN'S COMPENSATION, *supra* note 2 §, 36.50, at 6-144; Larson, *Suicide Defense*, *supra* note 24, at 60; *Iowa Comment*, *supra* note 23, at 672 n.13. In *McIntosh v. E. F. Hauserman Co.*, 12 A.D.2d 406, 211 N.Y.S.2d 482 (1961), the court was confronted with conflicting medical testimony, but recovery was allowed because the facts spoke "louder than any medical testimony as to the insidious breakdown of man's mental and physical capacities." *Id.* at 409, 211 N.Y.S.2d at 485. *See* Larson, *Suicide Defense*, *supra* note 24, at 60; *see also* Browning,

psychiatrist and not the lawyer who can determine if, why and to what extent, the worker's psychological homeostasis[97] was thrown out of systemic balance by the initial on-the-job injury. In truth, the traumatic injury was a triggering mechanism which disrupted the employee's vital balance[98] in such manner that his usual capacity to cope was overcome.[99] In psychiatric terms, the employee's ego, the mental construct representing all those mental processes and systems which allowed him to adjust both to his environment, as well as the internal realm of his emotions, urges and thoughts, was substantially impaired.[100] The trauma resulting from pain, suffering and permanent occupation loss created symptoms of psychological dysfunction which operated to dethrone the executive mechanism of his mind—the ego.[101] The psychiatric dysfunction which was created represented an interaction between his massive anxiety, the impaired executive mechanism of his mind and his

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The Psychiatric Expert, 15 TRIAL 36, 36 (Feb. 1979); Curphey, *The Psychological Autopsy: The Role of the Forensic Pathologist in the Multi-Disciplinary Approach to Death*, 1968 BULL. SUICIDOLOGY 39, 40; Neill, *The Psychological Autopsy: A Technique for Investigating a Hospital Suicide*, 25 HOSP. & COMM. PSYCHIATRY 1 (1974); Note, *Psychiatric Expert Witnesses: Proposals for Change*, 6 AM. J.L. & MED. 425, 427 (1980); Comment, *The Psychologist as Expert Witness: Science in the Courtrooms*, 38 MD. L. REV. 539 (1979).

Defense attorneys should use experts to establish that the causal chain has been broken, and also, when the *Sponatski* test or the New York rule are applied, to demonstrate that the claimant has not fulfilled his burden of proof. The defense attorney should never forget about the existence of the statutory bar preventing recovery for volitional or intentional acts. *See supra* notes 11 and 81 for examples of these statutory bars. A claimant should be denied recovery if the nonvolitional nature of the decedent's suicidal act is not established by demonstrating a direct causal link between the suicide and the mental disease or defect. When that link is made, however, the mental disease or defect serves to negate intent and removes the statutory bar to recovery.

Additionally, the claimant must demonstrate that the decedent suffered a work-connected injury which sets the chain of causation "in motion." Larson, *Suicide Defense*, *supra* note 24, at 57. Thus, if defense counsel can show that there are "stronger nonemployment influences accounting for the suicide, the suicide is a complete defense." *Id.*

[97] Homeostasis is defined as the "maintenance of relatively stable conditions in a system (such as blood temperature in the body) by internal processes that counteract any departure from the normal." OXFORD AMERCIAN DICTIONARY 312 (1980). This term was introduced into medicine by the eminent psychologist Walter B. Cannon. *See* H. SELYE, THE STRESS OF LIFE 38 (1956).

[98] K. MENNINGER, THE VITAL BALANCE 81 (1967).

[99] *Id.* at 125-52.

[100] A more extensive description of the ego can be found in L. KOLB, MODERN CLINICAL PSYCHIATRY 62-64 (1977).

[101] Somewhat analogous language is found in Jones v. Leon County Health Dept., 335 So. 2d 269 (Fla. 1976). In *Jones*, the Florida Supreme Court reversed the denial order of the Industrial Relations Commission and reinstated the award originally ordered by the claims judge. The *Jones* court stated that the decedent's tuberculosis acquired while on the job had "caused him to become devoid of normal judgment and dominated by disturbance of mind so as to *dethrone* his reason and destroy his will so that he was incapable of forming a willful intent to take his life." *Id.* at 272 (emphasis added). The result reached is appropriate, but somewhat lacking in analysis from a modern psychiatric perspective. The *Jones* court was correct in asserting that the executive processes of the mind (the ego) can be dethroned by occupational trauma, resulting in a situation in which the individual is "devoid of normal judgment," because the individual is "dominated by disturbance of

individual personality.[102] In essence, it was his self-effort to regain his psychological homeostasis that precipitated the psychiatric disorder.[103] However, his efforts proved unsuccessful.

Ultimately, "the only appropriate behavior seem[ed] to be the initiation of a series of events expected to end in self extermination . . . ."[104] At this point, the ego was virtually dead, pushed to its limit by the surrounding circumstances.[105] The leading psychiatric expert on the suicide phenomenon, Dr. Karl Menninger, has described this level of psychiatric dysfunction in the following manner:

> When the virtually unquenchable spark of life flickers out in despair, when all hope, need, and effort give way to futility, when the only release seems to be the ending of all further struggle then a Fifth Order of disintegration has been reached and death by one's own hand often follows.[106]

B. *A Practical Approach for the Attorney*

The hypothetical vignette presented a worker who, prior to his injury, had made a reasonable and culturally appropriate adjustment to life. He worked at a skilled job, had a normal attachment to his family and enjoyed sports as a participant and observer. He had established a positive personal identity and secured a place for himself as a productive actor in an economic role. He then suffered a severe blow to his very existence—the injury. His "usual" self, which was defined through reference to personal and occupational existence, was severely undercut. He could not do and be as before. In a very real sense the injury was a catastrophic rupture of his lifeline. In truth "he" (the self) psychologically no longer existed. His "vital balance" was so severely disturbed that he became the victim of a depressive illness which completely changed his personality and resulted in the destruction of his life.[107]

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mind." *Id.* Nonetheless, the *Jones* court erringly utilized terms like "reason" and "will" reminiscent of the *M'Naghten* rule of criminal law. See *supra* notes 40-58 and accompanying text for a discussion of the conceptual differences between the application of *M'Naghten* in criminal law and workers' compensation law.

[102] For an examination of the psychiatric development of an individual over an entire lifespan, *see* E. ERICKSON, CHILDHOOD AND SOCIETY (1968); E. ERICKSON, IDENTITY: USE AND CRISIS (1968); E. ERICKSON, DIMENSIONS OF A NEW IDENTITY (1974).

[103] *See supra* note 97 for a discussion of homeostasis. A similar situation exists when military personnel suffer combat-induced disorders. *See* Note, *Post-traumatic Stress Disorder—Opening Pandora's Box* 17 NEW ENG. 91 (1981). A master work analyzing the impact of trauma upon an entire community and its individual inhabitant's has also been written. *See* K. ERICKSON, EVERYTHING IN ITS PATH: DESTRUCTION OF COMMUNITY IN THE BUFFALO CREEK FLOOD (1976).

[104] K. MENNINGER, THE VITAL BALANCE 265 (1967).

[105] *Id.*

[106] *Id.*

[107] The injured employee's psychiatric disorder is properly designated "post-traumatic depression." *See* M. BLINDER, PSYCHIATRY IN THE EVERYDAY PRACTICE OF LAW (2d ed. 1982).

Undoubtedly, his injury "arose out of and in the cause of employment,"[108] and triggered a psychiatric disorder ultimately resulting in suicide. The vignette introduced no other possible causes for the psychiatric disorder. Nonetheless, the defense attorney, whenever possible, must attempt to break the causal chain by presenting expert psychiatric testimony of other disruptions to the employee's homeostasis.[109] In the vignette, the employee's vital balance was disrupted by the physical and psychic aftermath of the injury. The first cause (the injury) gave rise to the second cause (the psychiatric disorder), causing extreme manifestations of dysfunction. This psychiatric dysfunction limited the employee's normal capacity to cope with pain and left only self-destruction as a means of relief. Thus, the suicide was the product of the psychiatric disorder and, but for the original injury, the psychiatric disorder would not have existed.

Application of the chain of causation test would allow recovery in this case, where the strict application of the *Sponatski* test, because of its inherent deficiencies may have precluded an award of benefits.[110]

CONCLUSION

The unsettled nature of this area of workers' compensation law demonstrates the need for more consistency in adjudications of this type. It is our position that courts should adopt the chain of causation test. Adoption of the chain of causation analysis would provide a clear, consistent rule of law which exploits judicial expertise and provides compensation in appropriate cases. The chain of causation test as enunciated by the West Virginia Supreme Court in *Hall v. State Workmens' Compensation Comm'r.* is the only rule which stands in accord with the findings of modern psychiatry and the underlying policies of worker's compensation statutes. It utilizes modern psychiatric science to achieve substantial justice. Thus, it is essential that those who, of necessity, participate in the adjudication of workers' compensation cases of this nature familiarize themselves not only with decisions such as *Hall*, but also with the principles of modern psychiatric science.

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[108] LARSON'S WORKMEN'S COMPENSATION *supra* note 2, § 36.40, at 6-139.

[109] In the appropriate case, the attorney may wish to use a suicidologist. "A suicidologist is one who receives training in the determination of suicide and devotes a significant portion of his work to dealing with the diagnosis, prevention, or analyzation of suicidal tendencies." Widmann, *The Use of a Suicidologist In Accidental Death Litigation*, 47 INS. COUNSEL J. 219, 219 (1980). *See also* Note, *Psychological Autopsy: A New Tool for Criminal Defense Attorneys?* 24 ARIZ. L. REV. 421, 426 (1982) (allows an expert in human behavior to draw a psychological picture of a dead person whom the expert has never met).

[110] *See supra* notes 18-58 and the accompanying text for a detailed discussion of the *Sponatski* test.