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Suicide under Workmen's Compensation Laws

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SUICIDE IS THE ACT of taking one's own life voluntarily and intentionally. Refining the definition to a greater degree, judicial decisions have held that suicide is usually an act of a person who is able to weigh and appreciate the results of the contemplated deed.[1] As an act of this nature is against public policy, the state will do everything possible to discourage and prevent it.

Actually, no jurisdiction allows a death claim for suicide according to the strict definition of the term. When death benefits are paid to a decedent's dependents for death produced by his own hand, the term "self-destruction" rather than suicide is applicable. To allow recovery, all jurisdictions require that the decedent be subject to some mental derangement at the time of the commission of the act. It is the degree of derangement required, the manifestation of it, and the causal relationship of it to the compensable injury which create problems.

Briefly stated, the prevailing views on this subject can be divided into three general categories. First, the decedent must have suffered a compensable injury producing the insanity. This mental disorder must have caused the decedent to take his own life through an uncontrollable impulse, or in a delirium of frenzy without a conscious volition to produce death.[2] Second, the deceased must have been suffering from a mental disorder and this condition must be due to a work-connected injury.[3] Third, the mental disorder can be caused by any work-connected activity and no traumatic injury is required.[4]

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1 Hepner v. Dept. of Labor and Industries, 141 Wash. 55, 250 P. 461 (1926).

2 In re Sponatski, 220 Mass. 526, 108 N. E. 466 (1915). This case is the basis for the majority rule.

3 Harper v. Industrial Com., 24 Ill. 2d 103, 180 N. E. 2d 480 (1962). Whitehead v. Keene Roofing Co., 43 S. 2d 464 (Fla. 1949); Burnight v. Industrial Accident Comm., 181 Cal. App. 2d 816, 5 Cal. Rptr. 786 (1960). The English point of view is comprehensively annotated in 143 A. L. R. 1232 (1943). This view represents the minority rule in the United States.

4 Wilder v. Russell Library Co., 107 Conn. 56, 139 A. 644 (1927); Burnight v. Industrial Comm., *supra* n. 3. This is the most extreme point of view, and the two cases cited are the only ones holding that an injury is not required. These cases allowed death claims for suicides caused by insanity. The cause of the insanity which ultimately produced suicide was overwork.

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Majority View

In 1915 the Massachusetts Supreme Court[5] enunciated the majority rule. In this case the decedent, while in the course of his employment, had hot molten lead splashed into his eyes. While hospitalized and in a state of agonizing pain, he threw himself from a window and was fatally injured. The court upheld the decision of the Industrial Commission, allowing the claim. Judge Rugg set forth the majority rule which is followed in most of the jurisdictions:

> Where 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 suicide act even though the 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.[6]

This workmen's compensation decision was decided under the same test which is applied in regular tort cases. *Daniel v. New York, N. H., and H. R. Co.*[7] applied the same rule in a wrongful death action to determine whether or not a surviving dependent could recover from a tortfeaser whose wrongful act ultimately caused the injured person to commit suicide.

Following this general rule, courts first decide whether a compensable injury caused the insanity, and also the extent of the insanity. Therefore, if a decedent, while suffering from a

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The editors in 56 A. L. R. 459 comment that the Wilder case is the only decision of its kind in the United States. The Burnight case, decided in 1960, is the only decision which has used the Connecticut case as a precedent.

[5] In re Sponatski, *supra* n. 2, p. 468. This is the majority rule and is restated constantly in numerous cases and treatises on the problem. See also, 1 Larson, Workmen's Compensation, Sec. 36.20, p. 505, (1952); 5 Schneider, Workmen's Compensation, Sec. 1411, p. 526, (1946).

[6] In re Sponatski, *supra* n. 2 at p. 468.

[7] 183 Mass. 393, 67 N. E. 424 (1903).

mental disorder due to an industrial accident commits suicide, the party claiming the death benefits has the burden of establishing that no intervening cause produced the death. This is illustrated in a Massachusetts case[8] which refused to award death benefits for a suicide committed by a person suffering from a mental disorder. The decedent's act of self-destruction was willful and voluntary; therefore, death was not caused by a compensable injury.

Under the majority rule it appears that a claimant trying to obtain the death benefits must establish that the self-destruction of the decedent was due to a non-volitional act. He also has the burden of establishing that this non-volitional condition of the mind was manifested by the decedent's action prior to death. The most common method used to show the mental condition of the decedent is to introduce evidence showing that he was acting under an uncontrollable impulse or in a delirium of frenzy.

Actually the requirement that the act be committed either while under an uncontrollable impulse or while in a state of delirium of frenzy, is relaxed considerably when the courts apply this rule. Tribunals are endeavoring to determine the condition of the decedent's mind at the time of death. With this in mind, courts hold that when a person is suffering from extremely painful injuries sustained in an industrial accident his act of self-destruction is either due to an uncontrollable impulse or is committed while in a delirium of frenzy.[9] Thus, the nature of the injury and the outward manifestations of the pain are examined in order to determine the condition of the mind at the time of death. The converse can be easily seen in that courts following the majority rule deny compensation when the insanity is caused by remorse, depression, melancholy, and discouragement.[10]

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[8] Tetrault's Case, 278 Mass. 447, 180 N. E. 231 (1932).

[9] Blasczak v. Crown Cork & Seal Co., 193 Pa. Super. 422, 165 A. 2d 128 (1960); McFarland v. Dept. of Labor & Industries, 188 Wash. 357, 62 P. 2d 714 (1936), reh. den. (1937); Schofield v. White, 250 Iowa 571, 95 N. W. 2d 40 (1959). A quote from the McFarland case is an excellent illustration of this view: "If the injury causes pain and suffering which proximately causes insanity or a mental condition which renders the workman subject to periods of delirium, and the workman during a period of such delirium takes his own life, death may be attributed to the injury and is compensable under the Workmen's Compensation Act."

[10] Tetrault's case, *supra* n. 8. It must be noted that this case made no mention of Sinclair's Case, 248 Mass. 414, 143 N. E. 330, (1924), which allowed recovery where the self-destruction was caused by starvation. The motivation for the starvation, according to the court, was due to

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The most stringent applications of this majority rule are found in jurisdictions where an integral provision of the Workmen's Compensation Act precludes recovery for any intentional self-inflicted injury.[11] Although suicide is not specifically mentioned, a broader, more general term, "any self-inflicted injury," is considered as including suicide.[12] Forty-three states have statutes of this nature; [13] however, the application varies depending on the facts in the cases decided by the courts.

The Longshoremen's and Harbor Worker's Compensation Act[14] has a provision regarding self-injury similar to that found in the various state statutes. The Fifth Circuit Court of Appeals in Texas[15] allowed recovery for suicide. When the act

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insanity caused by depression and a psychastenic state of mind. The mental condition of the decedent was proximately caused by a compensable injury; and therefore, a death claim was allowed. This case is clearly a departure from the previous decision in Massachusetts; however, the Tetrault case realigned this state as following the majority rule. Now, neither case is applicable in this jurisdiction the legislature enacted a statute governing this problem. Under the statute for decedent to recover death benefits, he must show that an industrial injury caused the insanity and this insanity rendered the decedent irresponsible for his self-destruction. Mass. Gen. Ann. Ch. 152 sec. 26A, (1937). In view of this statutory enactment, Massachusetts has relaxed the requirements enunciated in In re Sponatski, *supra* n. 2.

The following are additional cases which refuse to honor death claims due to depression: Palmer v. Redman, 281 App. Div. 723, 117 N. Y. S. 2d 708, (1952); Seal v. Effron Fuel Oil Co., 284 App. Div. 795, 135 N. Y. 2d 231, (1954); Veloz v. Fidelity Union Casualty Co., 8 S. W. 2d 205 (Tex. Civ. App. 1928); Widdis v. Collingdale Millwork Co., 169 Pa. Super. 612, 84 A. 2d 259 (1951).

As can be seen in the cases cited, even New York, which certainly does not follow the majority view, does not allow claims when the insanity is of this nature. Seal v. Effron, *supra,* held that mere discouragement and melancholy due to an accident are inadequate to allow a death claim for suicide.

[11] A typical example of a statute of this nature is found in the first paragraph of the Ohio Rev. Code, sec. 4123.54 (1953).

[12] 99 C. J. S., Workmen's Compensation, sec. 264, p. 911 (1958).

[13] 1 Larson, Workmen's Compensation, *supra* n. 5, at p. 504. The only states not having a provision of this nature are Connecticut, Illinois, Michigan, Montana, Nebraska, New Hampshire, and Wyoming. The author in this treatise on the subject states that forty-one states have statutes of this nature; however, both Alaska and Hawaii have similar statutes. 1 Schneider, Workmen's Compensation Statutes, p. 74, sec. 2167, and p. 714, sec. 7482 (1939).

[14] Longshoremen's and Harbor Worker's Compensation Act, 33 U. S. C. A. 901, 903(B), (1957).

[15] Voris v. Texas Employer Inc. Ass'n., 190 F. 2d 929, (C. C. Tex, 1951), cert. den., 342 U. S. 932, 72 S. Ct. 376, 96 L. ed. 694, (1952). See 8 NACCA L. J. 46, (1951). The author considers this case as supporting the minority view; however, the court refused to decide specifically which view was applicable.

of suicide was committed it was the result of an irrational state of mind and while the decedent was under an uncontrollable impulse. The court referred to the majority and minority points of view, and stated that the evidence in the case at bar could support either view. Therefore, they refused to consider which view was properly applicable under the federal statute. The evidence showed that the act of the decedent was clearly non-volitional, and this was the basis for the court's decision.

States having statutes precluding compensation for self-inflicting injuries have applied various versions and adaptations of the majority rule in deciding whether or not a death claim should be honored.[16]

In denying a death claim, the Missouri Supreme Court[17] held that self-destruction is never prompted by a completely normal mind; however, if it is done with sufficient mental power to know the consequences of the act, then compensation cannot be awarded. This is true even though the mind is dominated by a mental disorder caused by a compensable injury.

The Washington Supreme Court,[18] in allowing a death claim, held that the act was committed under an irresistible compulsion or under an uncontrollable impulse. It is questionable in this case whether or not the insanity was caused by the industrial injury. Expert medical and psychiatric personnel testified that there was a causal relation between the industrial accident and the suicide; in fact, the accident precipitated the insanity which ultimately caused the self-destruction. The question of proximate cause was specially submitted to the jury, which found a causal relation. There was adequate evidence which demonstrated the non-volitional nature of the decedent's act. The method used in accomplishing the self-destruction was a manifestation of the decedent's inability to comprehend the physical consequences of his deed.[19]

The Supreme Courts of Wisconsin and Minnesota have applied the majority rule in suicide cases under their workmen's

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[16] California is an exception. In Burnight v. Industrial Accident Com., (*supra,* n. 3), it was held that the self-inflicted injuries referred to in their statutes apply only to injuries inflicted in order to obtain compensation.

[17] Mershon v. Missouri Public Service Corp., 359 Mo. 257, 221 S. W. 2d 165 (1949).

[18] Karlen v. Dept. of Labor and Industries, 41 Wash. 2d 301, 249 P. 2d 364 (1953).

[19] In the case referred to in *supra* n. 18 the decedent destroyed himself by thrusting his head into a running power saw.

compensation acts. In *Anderson v. Armour and Co.*[20] the Minnesota Supreme Court upheld the decision of the Industrial Commission. In affirming this decision the court held that the compensable injury caused the insanity and the decedent destroyed himself while possessed of an uncontrollable or irresistible impulse, or while in a delirium of frenzy without rational knowledge of the physical consequences of his act. The Wisconsin Supreme Court in *Jung v. Industrial Com.*[21] upheld the decision of the Industrial Commission and denied a death claim for suicide. They applied the same rule and held that when self-destruction is not produced while in a delirium of frenzy, without conscious volition, then the work-connected injury causing the mental derangement is not the proximate cause of the suicide.

It appears that in applying this test to determine whether or not a suicide is compensable, reviewing courts are reluctant to tamper with findings made by the various commissions, boards, and lower trial courts. If the evidence found in the record indicates that the decedent's act was non-volitional, the reviewing courts will not alter the award made by the inferior tribunals. This supporting evidence can be either extreme pain closely related to the injury or expert psychiatric testimony. If the latter, it must positively state that the decedent was incapable of a volitional act; and without evidence of this nature, recovery will not be allowed.[22]

Ohio applies the majority rule in deciding whether or not suicide is compensable. In 1935, Judge Stephenson, in *Industrial Com. of Ohio v. Brubaker*,[23] laid down the following requirements for allowing death claims due to suicide: (1) The injury causing the mental disorder must arise while in the course of

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[20] Anderson v. Armour & Co., 257 Minn. 281, 101 N. W. 2d 435 (1960). This is indeed a most unusual case in light of the factual situation. The court quoted verbatim the majority rule; however, in this case the decedent did not sustain any physical injuries. He was involved in an automobile accident in which he seriously injured another person. The emotional experience precipated the onset of a psychotic depressive reaction which ultimately caused the non-volitional suicide. Expert testimony established the causal relationship and the reviewing court refused to evaluate it. The court held that the evidence was adequate to allow the commission to award the death benefits. Thus, we have a case which applies the majority rule where the decedent suffered no traumatic injury.

[21] Jung v. Industrial Com., 242 Wis. 179, 7 N. W. 2d 416 (1943).

[22] Barber v. Industrial Com., 241 Wis. 462, 6 N. W. 2d 199 (1942); Anderson v. Armour & Co., *supra,* n. 20; Jung v. Industrial Com., *supra,* n. 21; Vennen v. New Dells Lumber Co., 161 Wis. 370, 154 N. W. 640 (1915).

[23] Industrial Com. of Ohio v. Brubaker, 129 Ohio St. 617, 196 N. E. 409 (1935).

employment. (2) The mental derangement produced by the compensable injury must be to such an extent that it is impossible for the decedent to entertain a fixed purpose to take his own life. (3) The self-destruction must be the direct result of the lack of purpose which is characterized by an insane mind.[24]

In essence, under Ohio law, to allow recovery for suicide, the claimant must show that the free moral agency of the actor was not in existence at the time of death. However, the application of the rule is relaxed to some extent in that the reviewing courts are reluctant to alter decisions of inferior tribunals. As long as there is some basis for the initial determination, the reviewing court will uphold its findings and refuse to reconsider the evidence.[25] An excellent example of this policy is stated in *Speece v. Industrial Commission*:[26]

> As suggested by the trial judge this, "is an extreme borderline case," and it is possible that if the duty had been imposed upon me in the first instance of determining the issue presented in this case by the evidence that I might have reached a conclusion opposite to that at which two juries arrived, both of which returned verdicts favorable to the plaintiff . . .[27]

In this case the decedent suffered over-exposure while in the course of his employment. According to one expert witness, this precipitated insanity. Thus, when the person killed himself he was incapable of realizing the nature and physical consequences of his act.

Generally, jurisdictions following the majority rule require that evidence be introduced to show that the self-destruction was due to a non-volitional act. The mental condition of non-volition must be manifested by delirium or frenzy. If these exterior manifestations are not apparent, then expert testimony which tends to establish the non-volitional condition of the decedent's mind is acceptable. This is not the only requirement that the

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[24] *Id.* at 617.

[25] Industrial Com. of Ohio v. Adam, Gdn., 40 Ohio App. 362, 178 N. E. 319 (1931); Industrial Com. v. Boyal, 29 Ohio Ct. App. 1 (1918) (this is the first case in Ohio which used the In re Sponatski Case, *supra* n. 2, as a precedent); Industrial Com. of Ohio v. Brubaker, *supra* n. 23; Speece v. Industrial Com., 46 Ohio L. Abs. 453, 70 N. E. 2d 387, (Ohio App. 1945). Burnett v. Industrial Com., 87 Ohio App. 441, 93 N. E. 2d 41 (1949).

[26] Speece v. Industrial Com., *supra* n. 25.

[27] *Id.* at 462.

claimant must satisfy; he must also prove that the mental disorder which produced insanity was originally caused by a compensable injury.

Minority View

The minority position is divided into two schools of thought. First there are a few states which have totally rejected the majority view and have adopted the English position. Secondly, through liberalization and modernization, some jurisdictions, while not specifically rejecting the majority rule, have established a position which is incompatible with it.

New York State is most illustrative of the second category. In the 1930's New York was applying the test established in the majority view to determine whether death benefits would be awarded for suicide.[28] This test has never been abolished; however, the actual basis for recovery is found in the case of *Delinousha v. National Biscuit Co.*[29] The decedent there suffered a compensable injury which produced a psychosis; this mental derangement caused the deceased to commit suicide. The New York Supreme Court upheld the award of the death benefits made by the Industrial Board, and the Court of Appeals affirmed this decision. Upon review the Court of Appeals considered the strict majority view as being too harsh. Therefore, it was held that a suicide is compensable if the act of self-destruction is produced by a mental derangement proximately caused by a compensable injury. The term "mental derangement" was qualified in this opinion when the court held that suicide death claims are not compensable if the mental disorders are classified as discouragement, melancholy, or a similar condition. It would appear that the court considered the words "mental derangement" and "insanity" as terms which could be applied interchangeably.

Since this decision, the New York courts have encountered some difficulty in determining the degree of insanity or mental derangement required to allow a death claim due to self-destruction.[30] The conflict is clearly illustrated in the cases of *Estate of*

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[28] Stapleton v. Keenan Gifferd & Lunn Apartment House Co., 265 N. Y. 528, 193 N. E. 305 (1934); Konieczny v. Kresse Co., Inc., 234 App. Div. 517, 256 N. Y. S. 275 (1932).

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

[30] The following cases denied death benefits, holding that discouragement, melancholy, or personality changes due to a compensable injury constitute

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Vernum v. New York University College[31] and *Maricle v. Glazier*.[32] In the former the death claim was denied and in the latter the benefits were awarded.

The decedent in the *Vernum Case*[33] suffered a compensable myocardial infarction which incapacitated him to such an extent that he was neither able to continue his employment nor to engage in his favorite outdoor activities. During his convalescence he committed suicide. At the Industrial Board's hearing the family physician testified that the deceased, due to the compensable injury, was depressed, discouraged, and despondent at the time of the fatal act. The board denied the claim and the court upheld this denial. Hence the mental derangement was inadequate to allow an award.

In *Maricle v. Glazier*[34] the deceased suffered a compensable inguinal hernia, and corrective surgery was performed successfully. The deceased was discharged from the hospital, and while recuperating at home he committed suicide. The Industrial Commission allowed the death claim, holding that a compensable injury produced a depressive psychosis which ultimately caused the suicide. The physician testified that the decedent was suffering from a mental derangement. When questioned as to the degree and extent of the derangement the doctor stated that it affected the sanity of the person at the time of his suicidal act. In making the award the commission did not consider the various degrees of insanity. The Appellate Division of the Supreme Court affirmed the award, and the Court of Appeals upheld this decision without opinion.

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an insufficient degree of mental derangement to authorize the award of benefits under the statute: Aponte v. Garcia, 279 App. Div. 269, 109 N. Y. S. 2d 761 (1952); Estate of Vernum v. State University of New York College of Forestry, 4 App. Div. 2d 722, 163 N. Y. S. 2d 727 (1957); Palmer v. Redman, *supra* n. 10, 117 N. Y. S. 2d, 708 (1952); Seal v. Effron Fuel Oil Co., *supra* n. 10.

The following cases approved awards for suicides induced by depressive psychosis, melancholy, and personality changes: Com. of Taxation & Finance v. Hedstrom-Spaulding Inc., 272 App. Div. 857, 70 N. Y. S. 2d 362 (1947); Lockwood v. Luckey Platt & Co., 267 App. Div. 930, 46 N. Y. S. 2d 937 (1944); Maricle v. Glazier et al., 283 App. Div. 402, 128 N. Y. S. 2d 148, affd. 307 N. Y. 738, 121 N. E. 2d 549 (1954). For discussion of the Maricle Case see: 26 Miss. L. J. 187 (1954 & 1955) and 14 NACCA L. J. 67 (1954); Pushkarowitz v. A. & M. Kramer, 275 App. Div. 875, 88 N. Y. S. 2d 885, affd. 300 N. Y. 637, 90 N. E. 2d 494 (1949).

[31] *Supra* n. 30.

[32] *Supra* n. 30.

[33] *Supra* n. 30.

[34] *Supra* n. 30.

The *Maricle Case* was decided in 1954.[35] If the courts had adhered to the precedent established in this case, any evidence of mental derangement would have been sufficient to allow recovery. Yet in 1957, the Court of Appeals in New York refused to allow a death claim when the decedent's mental condition was similar to the condition described in the 1954 decision.[36]

The conflict in these decisions appears to be reconcilable. Uniformly the courts hold that the degree of insanity required to allow recovery is a question of proof to be determined by the trier of the facts.[37] When there is evidence of a mental derangement, the reviewing court will not reconsider or revaluate the initial determination; however, an award will be overruled when the claimant fails to produce any evidence of mental derangement.[38]

Thus, when the New York position is analyzed the disparity in the illustrated cases is resolved. In both cases evidence of some mental derangement was introduced. The Commission considered the evidence, allowing the claim in the *Maricle Case*[39] and denying it in the *Vernum Case*.[40] Since the reviewing courts refrain from revaluating the evidence on mental derangement, the initial determination made by the Industrial Commission is upheld if there is some evidence to support its finding. Therefore, since both cases had evidence regarding mental disorder, the reviewing courts were correct in upholding the Commission's decision without questioning the findings of the administrative board.

In New York, death claims are awarded if a compensable accident causes a mental derangement which produces the act of self-destruction. The degree of brain derangement or insanity is not definite and must be decided by the commission in each case. This determination is not altered by the reviewing tribunal if there is some evidence, no matter how slight, to support the

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[35] *Ibid.*

[36] Estate of Vernum, *supra* n. 30.

[37] Blau v. Goldshare Restaurant, 278 App. Div. 595, 102 N. Y. S. 2d 84 (1951); Com. of Taxation & Finance v. Hedstrom-Spaulding Inc. *supra* n. 30; Lockwood v. Luckey Platt & Co., *supra* n. 30. All of these cases approved death benefits awarded by the Industrial Commission.

[38] The following cases reversed the Workmen's Compensation Commission as there was absolutely no evidence of mental derangement: Palmer v. Redman, *supra* n. 10; Seal v. Effron Fuel Oil Co., *supra* n. 30; Wessells v. Lockport Cotton Batting Co., 275 App. Div. 733, 87 N. Y. S. 2d 186 (1949).

[39] *Supra* n. 30.

[40] *Supra* n. 30.

original finding. It would appear that New York lacks a definite standard to determine whether or not the mental disorder is sufficient to allow recovery. If the commission holds the derangement adequate, then the suicide is compensable. The volitional condition of the deceased's mind is not a determining factor.

According to New York's position, the standard of derangement is determined in each case. If the Industrial Commission decides that the derangement is sufficient, an award will be made. This decision is not altered by a reviewing court; and therefore, this is the standard New York has adopted. If it is acceptable to the Industrial Commission, then the derangement is sufficient to allow recovery.

The extreme minority view rejects the concept of degrees, and holds that any insanity or mental derangement is sufficient to allow recovery. This view has been adopted from the British rule regarding suicide and workmen's compensation. In England, death caused by intentional self-destruction is compensable if due to a mental derangement which was the result of a compensable accident.[41] The view totally disregards the theory that the decedent must be incapable of a volitional act at the time of his death.

The most recent case accepting this minority view was decided in January, 1962.[42] The Supreme Court of Illinois, in *Harper v. Industrial Com.*,[43] upheld the decision of the Circuit Court, and allowed a death claim for volitional suicide. The Circuit Court reversed the initial determination of the Industrial Commission which had disallowed the death claim. The lower court's reversal was upheld by the Supreme Court. In this case of first impression, the Court was highly critical of the majority rule. The primary basis for this criticism is that the majority rule fails to recognize the role which pain and despair play in affecting the mind of the injured person. The court rejected the requirement of volition and asserted that any mental derangement can be sufficient to allow recovery; no guide line as to the extent or degree of derangement was considered by the court. It is of utmost importance to note that Illinois is one of the few states without a provision regarding self-inflicted injury in their

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[41] Fanning v. Richard Evans & Co., 16 B. W. C. C. 43 (1923); 1 Larson, Workmen's Compensation, sec. 36.10, p. 504, (1952); Anno. 143 A. L. R. 1232 (1943).

[42] Harper v. Industrial Com., *supra* n. 3. For discussion see 31 U. Cinc. L. R. 187 (1962).

[43] *Ibid.*

Workmen's Compensation statutes.[44] In fact, Justice Shaefer expressly states that a decision of this nature might not be applicable in a state controlled by a statute which expressly prohibits the payment of compensation for self-inflicted injuries.[45]

This Illinois decision cites with approval the two most prominent cases following the minority view.[46] The court referred to *Whitehead v. Keene Roofing Co.*,[47] in which the Florida Supreme Court rejected the majority rule and allowed a death claim. Although the majority rule was rejected, the factual situation would present a compensable death claim if the modern majority rule had been applied. The California Court of Appeals[48] allowed a death claim, and its opinion comprehensively treats the minority view.

The *Whitehead*[49] case, decided in 1949, was one of the first cases in the United States which explicitly rejected the majority rule. However, a careful analysis of the factual situation clearly indicates that the injury and the condition of the decedent's mind would satisfy the requirement set forth in the modern majority rule. The deceased suffered a serious compensable injury. While experiencing excruciating pain and partial paralysis the injured party swallowed poison which caused his death. Before expiring, the deceased said that the reason for his suicidal act was that he had "gone nuts." This was sufficient evidence to establish that the decedent's mental condition was non-volitional. The reviewing courts of Florida have not considered a suicide case which would be beyond the limits established in the modern majority rule. Therefore, it would be interesting to see the outcome of a case in Florida which clearly failed to qualify under the majority rule.[50]

Burnight v. Industrial Co.[51] was the second case cited by the Illinois court, and it unquestionably adopts the minority view. In fact, it is the best proponent of it. The minority position is stated thus:

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[44] *Supra* n. 13.

[45] Harper v. Industrial Com., *supra* n. 3 at 482.

[46] *Id.* at 483.

[47] Whitehead v. Keene Roofing Co., *supra* n. 3; see 3 U. Fla. L. R. 263 (1950).

[48] Burnight v. Industrial Accident Com., *supra* n. 3; see 8 U. C. L. A. L. R. 673 (1961).

[49] *Supra* n. 3.

[50] Since the Whitehead v. Keene case, (*supra* n. 3), neither the Florida Court of Appeals nor the Supreme Court seem to have considered a death claim under Workmen's Compensation due to suicide.

[51] Burnight v. Industrial Accident Com., *supra* n. 3.

> Where the injuries suffered by the deceased result in his becoming devoid of normal judgment, and dominated by a disturbance of mind directly caused by his injury and its consequences, his suicide can not be considered willful within the meaning and intent of the act.[52]

This case considered a death claim for a suicide produced by overwork. In reversing the Industrial Commission's decision, the court held that neither a traumatic injury nor a non-volitional act is required in order to allow a death claim due to suicide. The court reasoned that since the decedent's employment precipated a mental condition which ultimately led to suicide, it should be compensable. In adopting this position it was the California court's opinion that this view was accepted in England, Florida, Mississippi, New York, Massachusetts, and Iowa.[53]

However, a careful analysis of authorities cited in the *Burnight* case would indicate that in actuality the modern majority view has been used in some of these jurisdictions. England is committed to the minority view which she initially formulated. In order to approve a death claim the intentional self-destruction must be the result of an insane condition which in turn was due to a compensable injury. There is no requirement as to the degree of insanity. In England, the deceased can be aware of the consequences of his act and still recover.[54]

It is submitted that the Mississippi decision[55] illustrates the modern majority rule rather than the minority view as contended by the California court. In that case the Industrial Commission's award of death benefits was affirmed. The suicide occurred after the decedent suffered a compensable injury which aggravated a pre-existing condition. Expert witnesses testified that the deceased was in constant pain, and was suffering from a manic-depressive mental disorder. The witnesses were of the opinion that the deceased, due to his mental condition, was unable to comprehend the consequences of the fatal act.

The legislative enactment of Massachusetts[56] does not specifically codify the minority view; however, it is a liberalization of the strict majority rule as initially formulated in Massa-

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[52] *Id.* at 791.

[53] *Id.* at 792.

[54] *Supra* n. 41.

[55] Prentiss Truck & Tractor Co. v. Spencer, 228 Miss. 66, 87 S. 2d 272 (1952).

[56] Mass. Gen. Laws Ann., Ch. 152, sec. 26A (1937).

chusetts. Under this statute a dependent of the decedent must establish that the compensable injury caused the insanity, and that the insanity rendered the deceased not responsible for his act of self-destruction. Reviewing courts of this state have not construed the statute; therefore, whether or not a specific degree of insanity is required is yet to be litigated.

The Iowa case of *Schofield v. White*,[57] another cited authority of the *Burnight* case, is an excellent illustration of a suicide which would be universally compensable. While in the course of his employment, the deceased fell and sustained a serious head injury. This precipitated immediate, continuing insanity. The decedent never regained his rationality, and while in this condition committed suicide. This factual situation would be compensable under either the majority or minority view.

The *Nohe v. Sheffield Farms Co.*[58] case was relied upon as support for the minority view; however, it fails to accomplish this purpose. While it does not support the minority position, it is an excellent illustration of the present status of the New York law.

The distinguishing characteristics and aspects of *Whitehead v. Keene Roofing Co.*[59] have been discussed. While this case is authority for the minority position, the factual situation could have allowed recovery under the modern majority rule.

Thus, after a careful analysis of the authorities cited in the *Burnight Case*[60] it could appear that some fail to support the view proposed in the decision.

California, Connecticut, and Illinois have unquestionably accepted the minority view.[61] In these jurisdictions a decedent's act of self-destruction need not be non-volitional. The requirements for an award, under this view, are that when the act of self-destruction is committed, the mind of the deceased must be subject to a mental disorder. There must be some connection between the disorder and the compensable accident. The non-volitional aspect of the decedent's mind is not considered.

Two of the three states, Connecticut and Illinois, following the minority view are not restrained by a provision common to

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[57] *Supra* n. 9.

[58] Nohe v. Sheffield Farms Co., 4 App. Div. 2d 711, 163 N. Y. S. 2d 455 (1957).

[59] Whitehead v. Keene Roofing Co., *supra* n. 3.

[60] Burnight v. Industrial Accident Com., *supra* n. 3.

[61] Burnight v. Industrial Accident Com., *supra* n. 3; Harper v. Industrial Com., *supra* n. 3; Wilder v. Russell, *supra* n. 4.

most workmen's compensation laws which precludes recovery for self-inflicted injury.[62]

The Illinois Supreme Court,[63] in adopting the minority view, stated that they were free to do so because the legislature had not included a provision of this nature in the Illinois Workmen's Compensation Act.

California is the only state which has specifically accepted the minority view despite a legislative enactment precluding recovery for self-inflicted injuries.[64] This difficulty was overcome by a judicial interpretation of the statute. The court held that this provision denied compensation for self-inflicted injuries only when the injuries were sustained with the intent to obtain the benefits.

It would appear that the proponents of the minority view would prefer to determine whether a suicide is compensable by applying a loose, indefinable standard. If a compensable injury caused a mental condition leading to suicide, then a death claim should be awarded, even though the deceased knew, in a confused fashion, that he was ending his life. Whether or not the deceased knew the physical consequences of his act is immaterial when applying this standard. Neither the lack of knowledge nor the irresistible impulse requirement is necessary under this view. Simply stated, the minority view allows recovery even if the decedent knows what he is doing at the time of the fatal act.

Conclusion

When death is due to self-destruction there are two views as to when death claims should be allowed. Both views require a mental derangement; however, the degree and extent required creates the conflict.

The minority view is subdivided into two positions. First, New York has formulated a moderate point of view requiring some degree of insanity. Second, there are a few jurisdictions which have accepted the English position which does not require the decedent to be insane at the time the suicidal act is committed. The latter view is most extreme.

Barber v. Industrial Com.[65] is the best illustration of the

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[62] *Supra* n. 13.

[63] Harper v. Industrial Com., *supra* n. 3.

[64] Burnight v. Industrial Accident Com., *supra* n. 3; see note 8, U. C. L. A. L. R. 673 (1961).

[65] Barber v. Industrial Com., *supra* n. 22; Anno. 12 N. C. C. A. (N. S.) 298 (1943).

differences between the minority and the majority position. The Wisconsin Supreme Court denied the death claim, adhering to the majority rule. The court held that the decedent had rational knowledge of the consequences of his act; and therefore, due to this conscious volition, the suicide was not compensable. The dissenting opinion of Judge Fowler was highly critical of the court and proposed the adoption of the minority view. He rejected the principle of non-volition and stated that as long as the decedent was devoid of normal judgment, recovery should be allowed. This case brings into focus the conflicts between the majority and minority positions.

In rejecting the rule accepted in most jurisdictions, the minority view neglects to recognize the historical development of the modern majority rule. When the rule was first enunciated in the early 1900's, little was known of the functions and reactions of the human mind. Therefore, the court required an outward manifestation of the decedent's mental condition. The condition of the mind was determined by the acts of the deceased. Thus, when the acts reflected an uncontrollable impulse or a delirium of frenzy, the person was considered to be incapable of a rational act. As soon as a person was relieved of responsibility for his acts recovery was allowed.

It is submitted that under the minority view recovery is possible when the suicidal act is purely volitional. No standard has been established to determine the condition of the decedent's mind at the time of death; therefore, it is possible to award a death claim for a purely volitional suicide. An award under these circumstances would frustrate the intent and purpose of the workmen's compensation statute and it could be considered against public policy.

It seems that the better view rigidly adheres to the principle that the act of self-destruction must be non-volitional. The volitional condition of the deceased's mind is an issue of fact to be proven by competent evidence. The following tests could be applied to determine whether or not death benefits should be awarded: (1) Was the decedent's act of self-destruction non-volitional? (2) If there was a lack of volition, was this mental condition directly caused by a compensable injury? If an affirmative answer can be given to both of these questions, the claim should be allowed.