MAINE SUPREME JUDICIAL COURT
Sitting as the Law Court

Law Docket No. WCB-25-66

Carol (Nadeau) Brewster
(Appellee)

v.

Sappi North America
S.D. Warren Company
(Appellants)

and

CCMSI
(Third Party Administrators/Appellants)

Appeal From a Decision of the Appellate Division
Of the Workers' Compensation Board

BRIEF OF APPELLANTS

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(corrected)

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INTRODUCTION

This case presents the undecided question of whether the Maine Workers' Compensation Act awards death benefits to a divorced ex-spouse of a decedent employee who, following the divorce and at the time of death, had no obligation to support the divorced ex-spouse. Specifically, whether an ex-spouse who had remarried and was in no way financially dependent on the decedent employee for 23 years is entitled to lifetime weekly death benefits. Despite this Court concluding the purpose of weekly workers' compensation death benefits is to "compensate dependents for their economic loss *resulting from the employee's death…" Ladner v. Mason Mitchell Trucking,* 434 A.2d 37, 41 (Me. 1981) (emphasis added), a divided Appellate Division panel held that yes, in Maine, an ex-spouse who had been divorced without alimony for 23 years and remarried for 9 years at the time of the employee's death was a dependent eligible for weekly death benefit payments. In *Ladner* the Court held "…the claimants suffered no economic loss from the employee's death and are not entitled to death benefits." *Id.* Yet, in this case, the ex-spouse suffered no economic loss from the employee's death and was awarded death benefits.

In construing former and current versions of the death benefit statute it becomes apparent that to qualify for death benefits, a claimant must not only have

been a dependent at the time of injury, but also at the time of death. Otherwise, the purpose of the statutory scheme is frustrated. Thus, awarding death benefits to a long-divorced ex-spouse without alimony, who has remarried and has not been dependent on the employee for decades, and suffers no economic loss from her ex-husband's death, is inconsistent with the purpose of the statute. The Appellate Division's erroneous interpretation of former 39 M.R.S.A. §58, and by reference, current version 39-A M.R.S.A. §215, establishes a new class of compensation recipients that heretofore had not been determined to be eligible for death benefits. The Appellate Division's interpretation of the statutory scheme is illogical and has led to an absurd result in the present, and likely future cases, if left unresolved. Maine will stand alone in awarding death benefits under similar circumstances.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Donald Nadeau slipped and fell at work on April 28, 1985, landing on his right shoulder, arm, and hip, and striking the back of his head. As a result of that injury, he developed chronic pain, became sedentary, and his weight increased from 330 pounds to over 500 pounds. In 2014 he became bedridden because of his mobility problems. (App. 23)

At the time of his 1985 injury, employee Donald Nadeau was married to the Appellee, Carol (Nadeau) Brewster. They were divorced on February 25, 1997. The divorce proceedings resulted in a Settlement Agreement (App. 162-169), a Referee's Report incorporating the Settlement Agreement (App. 159-160) and a Divorce Judgment entering the Referee's Report as the judgment of divorce. (App. 161). The Referee's Report makes note of Mr. Nadeau's ongoing receipt of workers' compensation benefits for "total disability." (App.159). Pursuant to the divorce judgment, which incorporated the Settlement Agreement, neither party was responsible for payment of any alimony to the other. (App.165). Further, the Settlement Agreement included the following release:

> 10. Release. Expressly conditional upon compliance with this Agreement and upon approval by a court of competent jurisdiction, each party shall be fully released by the other, and each party does fully release the other, from any and all obligations for alimony, support and maintenance, tort claims or any other civil claim against each other except as provided herein, and each accepts the provisions herein in full and complete satisfaction of all obligations for alimony, support or maintenance, or otherwise arising out of the marital relationship of the parties. Expressly conditional upon compliance with this Agreement and court approval as aforesaid, each party further releases any rights or claims in the earnings, accumulations, interests in trust, money, securities, and property, real, personal or mixed, of the other, arising out of the marital relationship, excepting as provided for in this Agreement. (App.166)

As a result of the divorce judgment, Appellee renounced all claims for support from the employee and was not financially dependent upon the employee in any

way for the last 23 years of his life. (App. 057, 166). On June 26, 2011 the Appellee married her present husband, Dr. Thomas Brewster. (App. 042).

Mr. Nadeau died on September 12, 2020 from septic shock from an infected pressure ulcer due to his bed-bound status, which resulted from his 1985 work injury. (App. 023). Less than three weeks later Appellee filed a Petition for Award of Compensation – Fatal claiming death benefits under 39 M.R.S.A. §58, allegedly due to her ex-husband's April 28, 1985 injury.[1] (App. 021). Appellants opposed Appellee's claim because it is contrary to the purpose of death benefits under the Act as she is not the employee's widow, she is not a dependent of the employee, and she has suffered no economic loss from his death.

The Administrative Law Judge issued a decision on March 27, 2023 granting Appellee's petition and awarding her death benefits under 39 M.R.S.A. §58. (App. 022-026). The ALJ ruled that Appellee's marriage to Mr. Nadeau at the time of his 1985 injury, alone, was sufficient to make her a dependent eligible for death benefits, and that she had not become the dependent of another person because of, or at any time after, her marriage to Dr. Brewster. (App.026). On February 6, 2025, a divided panel of the Workers' Compensation Appellate Division affirmed the Administrative Law Judge's decision. *Carol (Nadeau) Brewster v. S.D.*

[1] Title 39 M.R.S.A applies to Mr. Nadeau's 1985 injury. P.L. 1991, ch. 885, § A-10.

Warren/Sappi North America, Me. W.C.B. No. 25-3 (App. Div. 2025) (App. 014).

On June 20, 2025 this Court granted Appellate Review.

STATEMENT OF THE ISSUE

I. Whether the Appellate Division committed legal error by holding the divorced ex-spouse of an injured employee, remarried for 9 years and not financially dependent upon the injured employee in any way for 23 years prior to his death, is a dependent eligible for lifetime weekly death benefits under 39 M.R.S.A. §58 simply because she had been dependent on employee at time of injury 35 years earlier?

ARGUMENT

I. The Appellate Division committed legal error by holding the divorced ex-spouse of an injured employee, remarried for 9 years and not financially dependent upon the injured employee in any way for 23 years prior to his death, is a dependent eligible for lifetime weekly death benefits under 39 M.R.S.A. §58 simply because she had been a dependent on the employee at the time of injury 35 years earlier.

The Appellate Division of the Maine Workers' Compensation Board erred by holding that Appellee was eligible for lifetime death benefits where Appellee had been divorced from the deceased employee for 23 years without alimony or support and had been remarried for 9 years when the employee died in 2020. The Appellate Division misinterpreted 39 M.R.S.A. §58 to require dependency only at

the time of injury to be eligible for lifetime death benefits, but not also requiring dependency at the time of death.[2]

A. Standard of Review

In a workers' compensation case, this Court will "review questions of law, including statutory interpretation, de novo." *Crosen v. Blouin Motors, Inc.* 2024 ME 38, ¶ 9, 315 A.3d 707, *citing, Freeman v. NewPage Corp.,* 2016 ME 45, ¶ 5, 135 A.3d 340. In construing the Workers' Compensation Act, this Court attempts "to give effect to the Legislature's intent" by "look[ing] to the plain meaning of the statutory language, and constru[ing] that language to avoid absurd, illogical, or inconsistent results. *Id.* The Court will defer to the Board's reasonable interpretation of the Workers' Compensation Act according to established principals of administrative law. *Bailey v. City of Lewiston,* 2017 ME 160, ¶ 9, 168 A.3d 762.

"Under those established principles, we do not defer to an interpretation of an administrative body unless we have determined that the statutory language is ambiguous and we have first attempted unsuccessfully to resolve that ambiguity by looking to the statute's purpose and structure; in addition, the administrative body's statutory interpretation must be reasonable in light of the statute's legislative history. *See, Guilford Transp. Indus. v. Pub. Utils. Comm'n,* 2000 ME 31, ¶11, 746 A.2d 910 ("if the statute is plain, we give effect to the unambiguous intent of the Legislature. If the statute is ambiguous, however, we review whether the agency's construction is reasonable." [citations omitted]).

[2] The Appellate Division and the Administrative Law Judge construed the current version of the death benefits statute, 39-A M.R.S.A. §215, as requiring the same result, citing *Foley v. Thermal Engineering,* Me. W.C.B. Dec. No. 15-2, ¶¶ 13-14, (App. Div. 2015) (App. 010, 025).

Bosse v. Sargent Corporation, 2025 ME 74, ¶ 12, fn. 7, __ A.3d ___ (August 14, 2025).

The Court will "ordinarily afford a measure of deference to an interpretation given a statute by those charged with its administration, but such an interpretation is never binding on this court." *Violette v. Leo Violette & Sons, Inc.*, 597 A.2d 1356, 1357 (Me. 1991), *Citing, Soucy v. Board of Trustees of the Maine State Retirement System*, 456 A.2d 1279, 1281 (Me. 1983).

B. The Statute is Ambiguous

For Mr. Nadeau's April 28, 1985 injury the entitlement to death benefits is governed by 39 M.R.S.A. §58, which reads in pertinent part:

> **§58. Death benefit; apportionment**
>
> If death results from the injury, the employer shall pay *the dependents of the employee, dependent upon his earnings for support at the time of his injury*, a weekly payment equal to two thirds his average gross weekly wages, earnings or salary…; from the date of death, until such time as provided for in the following paragraph…
>
> If the dependent of the employee to whom compensation will be payable upon his death is the *widow* of such employe upon her death or at the time she becomes a dependent of another person, compensation to her shall cease…
>
> If the employee *leaves* dependents only partially dependent upon his earnings for support at the time of injury, the employer shall pay such dependents… (emphasis added).

"Dependent" was defined in relevant part at 39 M.R.S.A. §2(4):

> "Dependents" shall mean members of any employee's family or next of kin who are wholly or partly dependent upon the earnings of the employee for support at the time of injury. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:
>
> A. A wife upon a husband with she lives, or from whom she is living apart for a justifiable cause or because he has deserted her, or upon whom she is actually dependent for support in any way at the time of injury.
> B. A husband upon a wife with whom he lives, or upon whom he is actually dependent in any way at the time of injury.
> C. A child or children, including adopted and stepchildren, under the age of 18 years, or under the age of 23 years if a student, or over the age of 18 years but physically or mentally incapacitated from earning, upon the parent with whom he is or they are living, or upon whom he is or they are actually dependent in any way at the time of injury to said parent…

39 M.R.S.A. §2(4).

This Court has addressed the requirement of dependency at the time of injury. *See, Ladner,* 434 A.2d 37 (Me. 1981)*; Cribben v. Central Maine Home Improvements,* 2000 ME 124, 754 A.2d 350. It not disputed that at the time of injury Appellee was a dependent of the deceased employee. But this Court has not decided the question of whether to be eligible for death benefits a claimant must also be a dependent at the time of death.

An award of death benefits is allowed under 39 M.R.S.A. §58. The first sentence of §58 states: "If death results from the injury, the employer shall pay *the dependents of the employee, dependent upon his earnings for*

support at the time of his injury, a weekly payment…" (emphasis added). This Court has not interpreted this phrase. The Appellate Division majority found this language to be unambiguous and limited inquiry to the plain language of the statute. It interpreted the italicized phrase to refer to dependency status at the time of injury only. *Carol (Nadeau) Brewster v. S.D. Warren/Sappi North America,* Me. W.C.B. Dec. No. 25-3, ¶ 11-¶ 15. (App. 009-011). Though commenting on the "sound policy" underlying Appellants' argument, it concluded legislative history would not change the result. *Id.* at ¶ 15, fn. 3. (App. 011).

Yet, there are two phrases separated by a comma, and each phrase must have a meaning. If the phrase "dependents of the employee (comma)" does not mean those who are dependent at the time of death, it effectively disappears from the statute. If the Appellate Division's interpretation were correct there would be no reason for the Legislature to include that phrase. It would be as though the italicized portion of the statute read, "…the employer shall pay *those who were dependent upon the employee's earnings for support at the time of his injury,* a weekly payment…"

The Appellate Division's interpretation renders the phrase "shall *pay dependents of the employee"* meaningless. As observed by the dissent, "if

dependency is determined at the date of injury alone, then the duplicative use of the term 'dependent' before the phrase 'dependent upon his earnings for support at the time of injury' is superfluous." *Carol (Nadeau) Brewster v. S.D. Warren/Sappi North America,* Me. W.C.B. No. 25-3, ¶ 24 (App. Div. 2025) (App. 015).

The same holds true for "partial dependents" in the third paragraph of §58:

> …If the employee *leaves dependents* only partially dependent upon his earnings for support at the time of injury, the employer shall pay such *dependents.*…

(emphasis added). Under the Appellate Division's interpretation there is no reason to state "If the employee leaves dependents", a reference to status at time of death, not injury. The Legislature could have drafted "the employer shall pay those partially dependent upon the employee's earnings for support at the time of injury, a weekly compensation…"

It is "axiomatic that no phrase in a statute should be interpreted as surplusage when a reasonable interpretation supplying meaning to that phrase is possible." *Adams v. Mt. Blue Health Ctr.,* 1999 ME 105, ¶ 9, 735 A.2d 478. The first sentence of §58 creates an ambiguity by use the word "dependent(s)" twice but in reference to relationships to decedent employee occurring at different times. The first use is referencing relationship at the

time of death "if death results..." and the second use is at the time of injury. The two requirements of the first sentence are: (1) the claimant must be a dependent of the employee in present time, when the employee dies, and (2) the claimant must have been dependent upon the employee's earnings for support at the time of the injury. The statute creates a "dual dependency" requirement for death benefit eligibility. The Appellate Division erroneously held the statute creates only a single requirement of dependency at time of injury and that the claimant need not have been a dependent at the time of death.

C. The Appellate Division Interpretation Is Inconsistent with the Whole Statutory Scheme

In conducting its analysis, the Appellate Division must consider "the whole statutory scheme of which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved." *Urrutia v. Interstate Brands International,* 2018 ME 24, ¶ 12, 179 A.3d 312; *Davis v. Scott Paper Co.* 507 A.2d 581, 583 (Me. 1986). The proper construction of 39 M.R.S.A. §58 and related statutes requires that they be considered together to give effect to the legislative intent.

In establishing the statutory scheme for awarding and terminating payment of death benefits, the Legislature included language focused on the

claimant's relationship to the decedent employee at the time of death, not solely the time of injury. The requirement of a dependent relationship at the time of death is evident in the Legislature's consistent use of the words "widow" and "widower" to refer to the dependent spouse, the historical cessation of death benefits upon "remarriage", a recognition that children who qualify as dependents at the time of injury meet the dependency requirements following the time of death, and the language acknowledging the expectation the employee "leaves" dependents.

The second paragraph of 39 M.R.S.A §58 provides for the cessation of death benefits by stating:

> If the dependent of the employee to whom compensation will be payable upon his death is the *widow* of such employee, upon her death or *at the time she becomes* a *dependent of another person*, compensation to her shall cease…[3]

(emphasis added). At the time of Mr. Nadeau's April 28, 1985 injury, Title 39 defined "Dependent of Another Person":

> For purposes of the payment or the termination of compensation pursuant to section 58, a *widow or widower* of a deceased employee shall be the dependent of another person when over half of his or her support during a calendar year was provided by the other person.

[3] A 1975 amendment inserted the phrase "at the time she comes a dependent of another person" in place of "remarriage". P.L. 1975 ch. 701 §24.

39 M.R.S.A. §2(10).[4] (emphasis added). The plain language of both §2(10) and §58 evidence a legislative intent that upon the employee's death the status of the eligible dependent spouse be that of a widow or widower. This is an expectation of marital status at the time of death. Furthermore, a 1975 amendment to §58 replaced the language "upon her death or remarriage" with the phrase "upon her death or *at the time she becomes a dependent of another person."* P.L. 1975 ch. 501, §24 (emphasis added). The question is whether the 1975 replacement of the word "remarriage" with the phrase "at the time she becomes the dependent of another person" intended to impose a new financial analysis of the widow's self-sufficiency or independence, apart from remarriage. The answer is no, "evidence of the widow's ability to support herself after the employee's death was not relevant.". *Ladner,* 434 A.2d at 42.

In *Ladner* it was contended that the widow's self-sufficiency meant that she had become the "dependent of another person", and therefore death benefits should cease. *Id.* The Court rejected that argument, explaining §58 was:

> …amended by P.L. 1975, ch. 701, a comprehensive act intended to conform Maine law to the Fourteenth Amendment of the United States Constitution and to Title VII of the United States Civil Rights Act of 1964 by removing gender distinctions. Section 58 previously provided that death benefits to a dependent widow would cease upon her death or remarriage, while death benefits to a dependent widower would

[4] Title 39 M.R.S.A. §2(10) was repealed and not replaced. P.L. 1991, ch. 885 §§ A-7, A-10. 39-A M.R.S.A. §102(9) defines "Dependent of another Person" under current Title 39-A. Because 39-A M.R.S.A. §102(9) expressly applies to an award of death benefits under 39-A M.R.S.A. §215 and is inapplicable to 39 M.R.S.A. §58, it is unclear what definition applies in this case.

> cease upon his death. Chapter 701 replaced 'remarriage' with 'at the time she became a dependent of another person', and added the same condition to a widower's eligibility. It is clear that prior to the enactment of chapter 701, death benefits payable to a widow or widower would have continued, *in the absence of remarriage*, regardless of mere self-sufficiency. *We do not believe that the Legislature intended to change that result* when it enacted chapter 701.

Id. (emphasis added). The Court specifically noted that benefits to the widow would continue "in the absence of remarriage", regardless of self-sufficiency, and the 1975 amendment was not intended to change that result. This supports the interpretation the Legislature intended that *at the time of death* the eligible spouse would be married to the decedent employee, and thus a widow or widower, not yet remarried.

Current Title 39-A has a similar definition of "dependent of another person.":

> **9. Dependent of another person.** For purposes of the payment or the termination of compensation under section 215, 'dependent of another person' means a *widow or widower* a deceased employee that over ½ of that person's support during a calendar year was provided by that other person.

39-A M.R.S.A. §102(9) (emphasis added). Accordingly, the current statute carries over the legislative expectation that spouses eligible to receive death benefits are widows and widowers. The Legislature's consistency in defining the dependent spouse in terms of "widow" or "widower" makes it

clear it intended death benefits would be payable to widows and widowers, not divorced ex-spouses. Status as a widow or widower is a dependency status determined at the time of death. "[A] widow is a woman whose husband is dead and who has not remarried." *Inhabitants of Town of Solon v. Holway*, 130 Me. 415, 157 A. 236 (1931). Appellee was never the employee's widow.

While upholding the Administrative Law Judge's application of the first paragraph of §58 to find Appellee was an eligible dependent based solely on marriage on the date of injury, the Appellate Division conceded that the second paragraph of §58 providing cessation of those very same death benefits "technically does not apply because, having been divorced from Mr. Nadeau, Ms. Brewster was not his widow." *Carol (Nadeau) Brewster v. S.D. Warren /Sappi North America*, Me. W.C.B. No. 25-3, ¶ 18 (App. Div. 2025) (App. 012). The Appellate Division left unexplained this inconsistency of its interpretation of 39 M.R.S.A. §58, suggesting an ambiguity it failed to resolve.

Similarly, the allowance of death benefits to the decedent employee's children is not limited to an examination of the dependency status at the time of injury. Under 39 M.R.S.A. §2(4), "dependents" shall mean family

members who are wholly or partly dependent upon the employee's earnings for support at the time of injury. If the employee had a child under age 18 dependent upon his earnings for support at the time of injury and the dependent widow later dies or becomes the dependent of another, if that child were then 25 years old, for example, he or she would be ineligible for death benefits because the dependency status *changed after the date of injury* and the "child" is beyond the age limitation:

> …If the dependent of the employee to whom compensation will be payable *upon his death* is the widow of such employee, upon her death or at the time she becomes the dependent of another person, compensation to her shall cease and the compensation to which she would have been entitled thereafter, but for such death and dependency, shall be paid to the child or children, if any, of the deceased employee, including adopted and step-children, *under the age of 18 years,* or over that age but physically or mentally incapacitated from earning, who are dependent upon the widow at the time of her death or dependency.

39 M.R.S.A. §58.

This demonstrates the Legislative intent to look at eligibility requirements existing beyond the date of injury. Under the Appellate Division's interpretation limiting dependency determination solely to the time of injury, that 25-year-old "child" would remain a dependent because at the time of injury he or she were wholly or partly dependent upon the employee's earnings for support. This is another inconsistency created by the Appellate Division's interpretation.

Additionally, the third paragraph of 39 M.R.S.A. §58 awarding compensation for partial dependency expressly references the relationship between the employee and a dependent at the time of death by allowing entitlement "if the employee *leaves* dependents only partially dependent…" 39 M.R.S.A. §58 (emphasis added). "One is not 'left' when an injury occurs". *Carol (Nadeau) Brewster v. S.D. Warren /Sappi North America,* Me. W.C.B. No. 25-3, ¶ 25 (App. Div. 2025) (dissent) (App. 016). One is 'left' when the employee dies.

Thus, not only does the first paragraph of §58 state a dependency relationship at the time of death - "If death results from the injury…", the whole statutory scheme, including provisions on cessation of death benefits, expresses a legislative expectation that the awards require a unique relationship existing after the date of injury- a child under age of 18, or as in this case, a widow and widower, not an ex-spouse.

Appellants respectfully suggest ex-spouses were not identified as dependents *anywhere* in the statute because it never occurred to the Legislature to provide for ex-spouses, divorced from the decedent employee at the time of death. It was not considered that divorced ex-spouses would ever make such claims. Such circumstances were not contemplated because

the statute stated the dependency requirement twice - when death results (leaves dependents) and at the time of injury. Examining the entire statutory scheme, it is evident the Legislature intended the spouse claimant to be widow or widower. If the Legislature had intended divorced ex-spouses to be eligible for death benefits it would have included language establishing payment of death benefits for ex-spouses in Title 39. For these reasons, until now, there was no reported Maine case awarding death benefits with divorced ex-spouses as claimants.

D. The Result at The Appellate Division Is Contrary to the Purpose of the Statute

This Court has previously identified the legislative purpose of 39 M.R.S.A. §58 as follows: "[T]he purpose of death benefits is to compensate dependents for their economic *loss resulting from the employee's death…*" *Ladner v. Mason Mitchell Trucking,* 434 A.2d 37, 41 (Me. 1981) (emphasis added). In *Ladner*, the deceased employee's three minor children lived with his ex-wife. As a result of their divorce judgment Ladner had a legal obligation to support his three minor children. *Id.* at 39. He defaulted on this obligation. Nevertheless, the Commissioner concluded the children were dependent upon the employee due to the existence of the legal obligation to support. *Id.* at 40. This Court disagreed:

> Since the purpose of death benefits is to compensate dependents for their *economic loss resulting* from the employee's death, if there was no reasonable expectation or probability that the employee would have fulfilled his legal obligations to the claimants, then the claimants suffered no economic loss from the employee's death and are not entitled to death benefits.

Id. at 41. (emphasis in original).

Thus, the Court determined the legislative purpose focused exclusively on the claimants need to establish economic loss resulting from the death. Importantly, the Court stated it was not holding that on the record the Commissioner could not find it probable that Ladner would have fulfilled his obligation *in the future,* suggesting an examination of the nature of the dependency relationship at the time of death that would result in an economic loss. *Id.*

Here, the Appellate Division relied on the Court's decision in *Cribben v. Central Maine Home Improvements,* 2000 ME 124, 754 A.2d 350 as requiring dependency at the time of injury only to establish entitlement to death benefits. *Carol (Nadeau) Brewster v. S.D. Warren /Sappi North America*, Me. W.C.B. No. 25-3, ¶ 13 (App. Div. 2025) (App. 009). In *Cribben,* the employee was injured in 1990. The claimant daughter was born in 1992. The employee and his *ex-wife* divorced in 1996. Under the terms of the divorce judgment the employee and his ex-wife were to share custody,

and the employee was to pay child support. The employee then died. The employee's brother then filed a petition for award seeking death benefits for the claimant daughter.[5] *Cribben*, 2000 ME 24, 754 A.2d 350, at ¶ 2. The Court held that a child born after the employee's injury but before the date of death was not entitled to receive death benefits because the child was not a dependent at the time of injury. *Id.* at ¶¶ 5-6. That is not in question in this case. Appellants do not dispute that dependency at the time of injury is one of the two dual dependency requirements of 39 M.R.S.A. §58. Dependency at the time of death was not in dispute in *Cribben* and was not addressed by the Court. The question in this case is the meaning of the phrase "dependents of the employee" expressly included by the Legislature preceding the phrase "dependent upon his earnings at the time of his injury". The Appellate Division erroneously failed to resolve this question.

Despite concluding this statutory phrase was unambiguous because it is not reasonably susceptible to a different interpretation, to support its reliance on *Cribben*, the Appellate Division stated that its review of the legislative history "demonstrates a consistent intent to connect entitlement to death benefits with dependency at the time of injury". *Carol (Nadeau)*

[5] The ex-spouse in *Cribben, supra,* was not a claimant for death benefits and therefore the issue presented in this case was not before the Court. Accordingly, the issue presented in *Cribben* was limited to determining dependency at the time of injury.

Brewster v. S.D. Warren /Sappi North America, Me. W.C.B. No. 25-3, ¶ 15, fn. 3 (App. Div. 2025) (App. 011). This misses the point on several fronts. First, Appellants are not asserting that dependency at the time of injury is not required. Appellee maintained she was presumed to be a dependent *at the time of injury* because on that date she was a "wife upon a husband with whom she lives, …". 39 M.R.S.A. §2(4)(A). Second, evidence of legislative intent to also connect entitlement to dependency at time of death is demonstrated by the Legislature's choice of the words "widow" and "widower" to describe the status of spouses for whom death benefits may be terminated through dependency upon another, *see*, 39 M.R.S.A. §2(10). There is no language in the statute referencing "ex-spouses", or their eligibility for and termination of death benefits. Third, concluding a legislative intent to tie entitlement to death benefits with dependency at the time of injury alone ignores the legislative purpose of death benefits to compensate for economic loss resulting at the time of death, as found by the Court in *Ladner*, 434 A.2d. 37 (Me. 1981).

Fourth, the statutory scheme of compensating those dependent upon the employee at the time of death is apparent from other provisions of the former Title 39 Workers' Compensation Act, of which the death benefit statute 39 M.R.S.A. §58 was a part. Historical and current provisions of the

Maine Workers' Compensation Act provide rights of action based on status as "surviving spouse", dependent on decedent employee at the time of death. Former 39 M.R.S.A. §142 provided for actions for damages for death, in addition to those for injury, by those entitled to bring an action under 39 M.R.S.A. §143. Those entitled were:

> ...his *surviving* spouse, or if he or she leaves no surviving spouse, his or her next of kin, who, *at the time of his or her death, were dependent upon his or her wages for support,* shall have a right of action for damages against the employer.

39 M.R.S.A. §143 (1964) (repealed and replaced 1991 P.L. c. 885, §§ A-7, A-8); codified at 39-A M.R.S.A. §903. (emphasis added). Current 39-A M.R.S.A. §§ 902, 903, provides a right of action to surviving spouse and next of kin, who, *at the time of death,* were dependent upon the wages of the employee for support. No right of action to an ex-spouse.

Thus, when considering the legislative intent, in order to qualify for death benefits, a claimant must not only have been a dependent at the time of injury, but also at the time of death. Otherwise, the purpose of the statutory scheme is frustrated, and absurd and illogical results must follow.

<u>It accomplishes the statutory purpose.</u> A long-divorced ex-spouse without alimony who has renounced all dependency claims and has not been

dependent on the employee for decades suffers no economic loss from her ex-husband's death and awarding her death benefits under former §58 is inconsistent with the purpose of the statute. This statute is to compensate loss from the death, not loss from the injury. To accomplish its purpose the statute must be construed to require dependency at the time of death and at the time of injury. Otherwise, the death causes no economic loss to the claimant, who would receive a windfall, and that statute fulfills no rational purpose.

The employer is unable to find a single case from any jurisdiction awarding death benefits to a divorced ex-spouse without alimony. Instead, the few reported cases in which a similar claim has been attempted suggest the opposite result:

> [C]ertainly there is no reason why a separated wife who has surrendered all right to look to the husband for support while he is living, should upon his death, receive benefits that are intended to replace in part the support which the husband was providing, or should have been providing.

Bass v. Mooresville Mills, 11 N.C. App. 631, 633-634, 182 S.E.2d 246 (1971). *Accord, Pickrel v. District of Columbia Department of Employment Services*, 760 A.2d 199 (D.C. App. 2000). If the decision in this case is affirmed, Maine will stand oddly alone.

It avoids absurd or illogical results. The award of death benefits to a long remarried ex-spouse serves no rational purpose. Death benefits must be payable to widows and widowers as the Legislature specified, not to remarried ex-spouses. If the Legislature had intended that death benefits could be payable to remarried ex-spouses, it would have enacted a provision for the cessation of those benefits upon the divorced ex-spouse's death or subsequent remarriage. The Legislature saw no need to do so because it did not contemplate such an interpretation of the law.

The dependency presumption of Title 39 provided, "The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee: A. A wife upon a husband with whom she lives…" 39 M.R.S.A. §2(4)(A). This means that if a remarried ex-wife's second husband (Dr. Brewster in this instance) were to die because of a work-related injury, the remarried ex-wife (Appellee Mrs. Brewster in this instance) would be his dependent for the purpose of eligibility for death benefits. In that circumstance, if section 58 does not require dependency at the time of death, the remarried ex-wife would be eligible for 100% death benefits on account of each of her successive husbands' injuries. That would be an absurd and illogical result, justified by no conceivable policy goal, and inconsistent with analogous case law. *See, Freeman v. NewPage Corp.*, 2016 ME 45, ¶ 8, 135 A.3d 340. (statutory maximum benefit

establishes the highest weekly benefit available to an injured employee, regardless of the number of injuries the employee suffers). The statute should be construed to prevent that absurd and illogical result while fulfilling the statutory purpose of compensating dependents for the economic loss resulting from an employee's death.

It is a most absurd and illogical result that someone in Appellee's position would receive a windfall of death benefits in a case such as this one. At the time of Donald Nadeau's death, Mrs. Brewster had been divorced from him for over 23 years. She was not his spouse. She was not his widow. She had not been a member of his family for over 23 years. She had not been living with him for over 23 years. She had not been his dependent for over 23 years. She had waived all rights to financial support from him, including any right to support from his workers' compensation benefits, for over 23 years. She had not been financially dependent upon him in any way for over 23 years. She suffered no economic loss whatsoever because of his death. She had been remarried for over nine years prior to his death. The purpose of an award of death benefits under the Workers' Compensation Act is to compensate dependents for their economic loss resulting from an employee's death. To provide a windfall based on a prior relationship from the distant past is absurd, illogical, and has no rational purpose or justification.

The Court should not ignore the many absurdities and contradictions that result from looking solely at the time of injury. Instead, the Court must construe 39 M.R.S.A. §58 to require dependency at the time of death also, thereby allowing the entire statutory scheme to fit harmoniously together and to accomplish the statutory purpose.

CONCLUSION

For all the reasons stated, Appellants respectfully request this Court grant their appeal, vacate the decision of the Maine Worker's Compensation Board Appellate Division and remand this matter to the Appellate Division with instructions to vacate the decision of the Administrative Law Judge and deny Appellee's Petition for Award- Fatal.

DATED at Scarborough, Maine this 5th day of September 2025.

/s/ Daniel Gilligan
DANIEL GILLIGAN
Attorney for Appellants

CERTIFICATE OF SERVICE

I, Daniel Gilligan, attorney for the Appellants in this matter, hereby certify that I have made service of one copy of the foregoing Brief of Appellants and Appendix to the Briefs on James MacAdam, attorney for the Appellee, and Richard Hewes, Esq., General Counsel for the Maine Workers' Compensation Board, via email and by depositing same this day in overnight delivery with United Parcel Service, delivery fees prepaid.

DATED at Scarborough, Maine this 5th day of September 2025.

/s/ Daniel Gilligan
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