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

REPLY BRIEF OF APPELLANTS

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September 18, 2025

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I. Appellee's Argument Supports the Determination that §58 Is Ambiguous

Appellee concedes that the Legislature's use of the words "injury" and "death" in the first sentence of §58 are meant to describe two separate and distinct triggering events for payment of death benefits. (Appellee Brief, p. 24). In *Cribben v. Central Maine Home Improvements*, 2000 ME 124, 754 A.2d 350, the Court noted:

> For the purposes of subsection 58-A[1], the terms "injury" and "death" are used to connote two separate and distinct events. Examination of the remainder of section 58-A reinforces our interpretation that the Legislature uses the word "death" to refer to the fatality that gives rise to an award of death benefits, and the word "injury" to refer to the work-related incident that precipitates that fatality. *Id.* at ¶ 6.

These two events can occur at different times. In *Cribben,* the facts of the case called the Court to address only one of the two events: whether the deceased employee's child was dependent on the employee at the time of injury. *Id.* at ¶ 1. The child's status of a dependent when the employee's death resulted from the injury was not in dispute. Because the child was born after the date of injury, she was not a dependent for purposes of receiving death benefits. *Id.* The Court did not

[1] 39 M.R.S.A §58-A is virtually identical to its predecessor 39 M.R.S.A. §58.

address the issue of the death event raised in the present case. It is the event of the employee's death that gives rise to the dependent's eligibility for death benefit payments.

This acknowledgment supports Appellants' argument that the use of the word "dependent(s)" twice in the same paragraph is because two events are addressed. The phrasing of the §58 describing two separate events applying to dependents creates an ambiguity, thereby requiring further analysis of the whole statutory scheme of which §58 forms a part so that the intent of the Legislature may be achieved. *Urrutia v. Interstate Brands International,* 2018 ME 24, ¶ 12, 179 A.3d 312.

Respectfully, there is sufficient ambiguity in the language of §58 to look to the statutory purpose of awarding death benefits.

II. Title 39-A Does Not Clearly and Unambiguously Tie the Determination of Dependency Status to the Time of Injury Only.

Relying on the current definition of "dependent" in 39-A M.R.S.A. §102(8) Appellee argues who is a dependent eligible for death benefit payments is determined solely with reference to status at the time of injury. 39-A M.R.S.A. §102(8)[2] states in part:

[2] Both the Appellate Division and the Administrative Law Judge relied on the definition of "dependent" set forth in former 39 M.R.S.A. §2(4) to apply §58. Appellee applies the current §102(8) definition of dependents, enacted in 1992. *See,* 39-A M.R.S.A. §A-10. Appellants' arguments apply under either statute.

8. Dependent. Dependent means a member of the employee's family or that employee's next of kin who is wholly or partly dependent upon the earnings of the employee for support at the time of injury. The following persons are conclusively presumed to be wholly dependent for support upon a *deceased* employee:

A. A *spouse* of the employee who was living with the employee at the time of the *employee's death*, who was living apart from the employee for a justifiable cause or because the spouse had been deserted by the employee or who was actually dependent in any way upon the employee at the time of injury.
(emphasis added)

39-A M.R.S.A. §102(8)(A)

Appellee maintains that because the conclusive presumption of wholly dependent status is stated in the alternative, with one of four alternative bases available for a spouse actually dependent in any way upon the employee at the time of injury, §102(8)(A) is a clear and unambiguous statement of intent to tie dependency solely to the time of injury. Of the four alternative options "actually dependent" in any way at the time of injury is the conclusive presumption option claimed by Appellee. (Appellee Brief, p. 17).[3] Appellee argues, without support, that "many years ago" the Legislature made a policy decision to temporarily link the definition of dependents solely to the time of injury, particularly with respect to the conclusive presumption created by marriage. (Appellee Brief, p. 18). This

[3] Appellee's position leads to the illogical result that she can be "wholly" dependent on two husbands simultaneously. First, wholly dependent on Mr. Nadeau based solely on actual dependency at the time of the 1985 injury, and wholly dependent on Dr. Brewster, her current spouse with whom she lives.

conclusion is unsupported by the full definitions of dependents in former §2(4) and current §102(8). Temporally, both statutes refer to being wholly dependent for support "upon a *deceased* employee". Both statutes identify the claimant dependent as a "member of the employee's family or next of kin". For asserting the conclusive presumption based on marriage, former §2(4) describes the claimant as a "wife". Indeed, current §102(8) describes the claimant as a "spouse" (ex-spouse not mentioned), with the first stated conclusive presumption "as spouse of the employee living with the employee at the time of the employee's death".[4] When Mr. Nadeau became a "deceased employee", Appellee was not a member of his family, next of kin, or spouse. Appellee was not a spouse living with Mr. Nadeau at the time of death. Therefore, read in its entirety §102(8) is hardly a clear statement that determination of spousal dependency status is limited solely to facts existing on the date of injury.

Appellee further argues that the current death benefit statute, 39-A M.R.S.A §215(1), removes the grammatical problems in §58 created by a "comma" separating the phrases "If death results from injury, the employer shall pay dependents of the employee (comma) dependent upon his earnings for support at

[4] Though not applicable to the facts of this case, because the §102(8)(A) presumption options of "living apart" from the employee for a justifiable cause or because of desertion modify the initial presumptive status of dependent of the spouse "living with" the employee at the time of death, three of the four presumption alternatives support analysis of the relationship at the time of death, not solely the time of injury.

the time of injury…" (Appellee Brief, p. 18, fn.7). Appellee notes this comma is removed in §215(1), eliminating any ambiguity in §58.

Setting aside that §215(1) is not the death benefit statute at issue, Appellee does not answer the ambiguities created in the first sentences of both §58 and §215(1) by use the word "dependent(s)" twice while referring to the separate events of death and injury. The first use of the word dependent is to describe circumstances existing when death results and the second use is to describe circumstances at the time of injury.

Appellee attempts to break down the sentence structure of §58 for support. (Appellee Brief, p. 19) but overlooks that in the first instance "dependents" is used as a noun to describe a set of persons existing when the death event occurs. If that phrase "If death results from the injury, the employer shall pay dependents of the employee (comma)" does not mean those persons dependent at the time of death, it effectively disappears from the statute. There would be no reason to include that phrase. The second use of the word dependent, "dependent upon the employee's earnings for support", is an adjective to modify the first set of dependents at the time of death to a subset of those eligible to receive death benefit payments. Appellee's arguments fail to explain the presence of the word dependent(s) twice in former §58, or current §215(1), comma present or not.

III. Appellee Minimizes the Statutory Purpose of Death Benefits

Appellee agrees that "one" purpose of §58 is to compensate for economic loss resulting from the injured employee's death but this purpose should "yield" to other, unrelated, legislative or administrative purposes. (Appellee Brief, p. 20).

Compensating for *economic* loss resulting from the employee's death is not just "one" purpose of §58- it is the purpose of the death benefit statute. This Court rejected a definition of dependency so broad to encompass psychological dependency. *Ladner v. Mason Mitchell Trucking Co.,* 434 A.2d 37, 40 (Me. 1981). When determining the statutory purpose of §58 the only purpose identified by this Court was to "compensate dependents for their *economic* loss resulting from the employee's death," *Id.* at 41 (emphasis in original). No other legislative purpose was determined.

Appellee suggests the conclusive presumptions of §102(8) are one such legislative purpose to which the larger purpose of compensating for economic loss caused by the death should yield. Appellee cites no supporting legislative statement or history. The suggestion is the importance attached to the marital relationship eliminates the administrative burden of proving actually dependency merely by establishing the spousal relationship at the time of injury. Yet, it is no greater a burden to establish the marital relationship at the time death. There is no administrative justification for ignoring the legislative goal of compensating for the economic loss resulting from the death of the employee.

IV. Michigan Law Does Not Establish Death Benefit Entitlement for Ex-Spouses

Appellee suggests that Michigan law supports her position that an ex-spouse of the deceased employee is entitled to payment of death benefits. Appellee asserts that because many of the 1992 changes to the Maine workers' compensation system recommended by the Blue Ribbon Commission looked to Michigan law, she is entitled to payment of death benefits under former §58.[5] Yet, Appellee does not cite any Michigan case holding that an ex-spouse is entitled to payment of death benefits. Appellee does not cite a case so holding from any jurisdiction.

Appellee argues, without specific attribution, that current §215(1) is derived in part from MCL 418.341, which provides:

> Questions as to who constitutes dependents and the extent of their dependency shall be determined as of the date of injury to the employee and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions except as otherwise provided in sections 321, 331 and 335. . .

Neither former Title 39 nor current Title 39-A contain language similar to this restrictive language of "irrespective of any subsequent change". Further, MCL 418.341 cites exceptions. One exception cited is MCL 418-331 providing

[5] *See,* Brief of Appellee, p. 18, fn. 7; Report of Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System and to Make Recommendations Concerning Replacement of the Current System, August 31, 1992.

"Persons Conclusively Presumed to Be Wholly Dependent for Support Upon Deceased Employee". Notably, under this subsection former spouses and surviving spouses are distinct. MCL 418.331 states in part:

> In the event of the death of an employee who has at the *time of death* a living child by a *former* spouse or a child …, that child shall be conclusively presumed to be wholly dependent for support upon the deceased employee, even though not living with the deceased employee at the time of death.

MCL 418.331. (emphasis added). The subsection provides dependency status for the child of the former spouse but not the former spouse. Having afforded the conclusive presumption to the deceased employee's child by a *former* spouse under the age of 16, subsection 331 provides in part:

> The death benefit shall be divided among all persons who are wholly dependent upon the deceased employee in equal shares. The total sum due a *surviving* spouse and his or her own children shall be paid directly to the surviving spouse for his or her own use, and for the benefit of his or her own children.

MCL 418.331.

This Michigan exception to fixing the determination of dependency to the time of injury provides for the dependency status for the child of the employee's former spouse and for the surviving spouse, but not the former spouse.

A further exception to fixing the determination of dependency to the time of injury is set forth in MCL 418.335(1), which provides in part:

> Upon the remarriage of a dependent *wife* receiving compensation, such payments shall cease upon the payment to her of the balance of the compensation she would have otherwise been entitled to…"

MCL 418.335. (emphasis added). Thus, the Michigan statutes express an expectation that the dependent spouse is a wife, not an ex-spouse, and that remarriage is an allowed subsequent change exception as to who constitutes a dependent under MCL 418.341.

Appellants were unable to locate a Michigan case awarding workers' compensation death benefit payments to a person who was an ex-spouse at the time of the employee's death. But in *Hammons v. Highland Park Police Dep't,* 421 Mich. 1, 364 N.W. 2d 575 (Mich. 1985), the Court observed that the Workers' Compensation Appeal Board (WCAB) had denied a former wife death benefits because she was not married to or living with the deceased employee at the time of his death. *Id.* at 577.[6] There, the employee committed suicide, and his former wife filed a claim for death benefits on her own behalf and on behalf of her minor children. A hearing referee denied benefits and the WCAB reversed, finding the employee's profound emotional disorder, which led to his suicide, was contributed to by work-related factors. *Id.* at 576. The Court observed that the WCAB, citing both MCL-418.341 and MCL-418.331, "denied Mrs. Hammons benefits, stating she was no longer married to or living with Hammons at the time of his death. *Id.*

[6] The Court noted the WCAB decision was unpublished. *Id.* at 576, fn. 1.

at 577, fn. 3. The only issue on appeal was whether death benefits were properly awarded to Hammons minor children. *Id.*

Therefore, it is respectfully suggested that there is no merit to Appellee's claim that Michigan law supports an ex-spouse's eligibility for death benefit payments under §58.

CONCLUSION

For all the reasons stated in its Reply Brief, 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 18th day of September 2025.

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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 Reply Brief of Appellants on James MacAdam, Esq., 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 18th day of September 2025.

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