STATE OF MAINE

CUMBERLAND, SS.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
CIVIL DOCKET NO. WCB-25-66

CAROL (NADEAU) BREWSTER,
Employee/Appellee

Vs.

S.D. WARREN COMPANY/SAPPI NORTH AMERICA,
Employer/Appellant

and

CCMSI,
Insurer/Appellant

WCB #85-018153
Date of Injury: 4/28/85

On Appeal of a Decision of the Appellate Division
of the Workers' Compensation Board

REPLY BRIEF ON BEHALF OF EMPLOYEE/APPELLEE

James J. MacAdam, Esq.
Bar No. 2484
Counsel for Carol (Nadeau) Brewster
Employee/Appellee
MacAdam Law Offices, P.A.
45 Mallett Drive
Freeport, Maine 04032

TABLE OF CONTENTS

Page No.

TABLE OF AUTHORITIES

Page No.

Cases

Statutes

Other Authorities

ARGUMENT

1. The Appellant's assertion that § 58 is "ambiguous" is, in addition to being incorrect, a red herring; the central issue of statutory construction in this case will ultimately turn on the plain language of the relevant statutory provisions, mixed with a measure of deference to the Appellate Division' interpretation of the Workers' Compensation Act.

2. The Appellant's reliance on dicta in *Ladner v. Mason Mitchell Trucking* to the effect that the purpose of the death benefit statute is to compensate dependents for economic loss is incomplete.

3. It is far from "evident" that the Legislature intended the "spouse-claimant" to be a widow or widower; so long as the spouse at the time of injury is not, or has not become, the dependent of another at the time of the injured worker's death, § 58 death benefits accrue to the spouse dependent at the time of the injury.

ARGUMENT

1. The Appellant's assertion that § 58 is "ambiguous" is, in addition to being incorrect, a red herring; the central issue of statutory construction in this case will ultimately turn on the plain language of the relevant statutory provisions, mixed with a measure of deference to the Appellate Division's interpretation of the Workers' Compensation Act.

The Appellant's argue that the second clause of the first paragraph of 39 M.R.S. § 58 is "ambiguous" because it allegedly fails to set forth clearly that the "dependents" noted in that clause must be viewed as dependents at the time of death. For ease of reference, the relevant clause is set forth below:

> "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 injury, a weekly benefit… ."

The clause in question, "the employer shall pay the dependents of the employee," however, was not viewed as ambiguous by this Court in *Cribben v. Central Maine Home Improvement*, 2000 ME 124, 754 A.2d 350 (interpreting virtually identical 39 M.R.S.A. § 58-A). The Court quite reasonably looked to the applicable statutory definition of dependent (39-A M.R.S. § 102(8)(A)) to determine to whom payments should be made – not, as advocated by the Appellant, to *when* such dependency attaches for purposes of the award of benefits. The Court stated that "[t]he term 'dependent' is defined in 39-A M.R.S. § 102 (8)." *Id*. at P4. The relevant part of the statute reads:

> "Dependent means a member of an 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 the injury."

The Court did not view this definitional statute as ambiguous or difficult to interpret: "For a child to be treated as a 'dependent' pursuant to workers' compensation law, the child must have been dependent upon the employee, either wholly or partially, 'at the time of the injury.'" *Cribben v. Central Maine Home Improvements*, 2000 ME 124, P5. The Court also recognized the distinction between the use of the words "death" and "injury" in § 58-A:

> "For purposes of subsection 58-A, the terms 'injury' and 'death' are used to connote two separate and distinct events. Examination of the remainder of § 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 P6.

There is nothing ambiguous about this analysis, which is fully applicable to our case. The Appellant might have found this statutory scheme less ambiguous if it had bothered *to cite or even refer tangentially* to § 102(8)(A) in its main brief. The Appellant writes, rather remarkably, on page 25 of its main brief that "[t]he question in this case is the meaning of the phrase 'dependents of the employee'…." The Appellee would suggest that one good place to start when trying to ascertain the meaning of a statutory term is the express statutory definition.

As noted in our main brief, the § 58 clause at issue is, from a grammatical perspective, simply the indirect object of the verb "pay." It merely refers to the individuals (i.e., dependents of the employee) who will receive the payment. The next clause – "dependent upon his earnings for support at the time of the injury" – is a participial phrase modifying "the dependents of the employee." It provides additional information about their dependency on the employee's earnings, i.e., the timing of the dependency (at the time of injury).

Although this language was marginally "cleaned-up" when § 58-A became 39-A M.R.S. § 215(1) in 1992[1], to make it even clearer that dependency at the time of the injury alone establishes an entitlement to death benefits, it is far from

[1] Section 215 (1) reads in pertinent part as follows:
"…[I]f death results from the injury of the employee, the employer shall pay … to the dependents of the employee who were wholly dependent upon the employee's earnings for support at the time of the injury a weekly payment… ."

ambiguous. That is, it is not reasonably susceptible to two different meanings. *Cf*., *Jordan v. Sears, Roebuck, & Co*., 651 A.2d 358, 360-361 (Me. 1994) (ambiguity found in coordination statute due to two possible interpretations; Court chooses one over the other based on the plain language of the statute and an unrevealing legislative history).

"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." *Bosse v. Sargent Corp*., 2025 ME 74, P12, n.7 (citing *Guilford Transp. Indus. V. PUC*, 2000 ME 31, P11). "As we have done in the past, we will continue to afford appropriate deference to the Appellate Division's reasonable interpretation of the workers' compensation statute [citations omitted] and will uphold the Appellate Division's interpretation unless 'the plain language of the statute and its legislative history' compel a contrary result." *Bailey v. City of Lewiston*, 2017 ME 160, P9 (citations omitted). The plain language of both §§ 58 and 102(8)(A) is clear and unambiguous; neither the legislative history[2], nor the plain language would "compel" the result advocated by the employer.

[2] The Appellate Division concluded with respect to the legislative history that "[r]review of the extensive legislative history of the death benefit provisions in the Act over the years demonstrates a consistent intent to connect entitlement to death benefits with dependency at the time of injury." *App. 11, n. 3.* The text of the statute, as set forth by the Division, has remained relatively stable over the years, and the tweaks made since 1965 have not changed the basic structure, whereby dependency for purposes of awarding death benefits is tied to the date of injury, not the date of death.

Even if viewed as ambiguous in some manner, and that both interpretations could theoretically be viewed as "reasonable," an examination of the legislative intent, as revealed by the plain language, points towards the interpretation utilized by the Appellate Division. "In the absence of evidence of legislative history, we return to the plain or ordinary meaning of the words employed by the statute to discern legislative intent. *See* 2A Norman J. Singer, Statutes and Statutory Construction, § 48.01, at 414 – 15 (6th ed. 2000)." *McNally v. Douglas Bros*., 2003 ME 155, P9, 838 A.2d 1176, 1179.

Because the statute is not reasonably susceptible to two different meanings or interpretations, it is likely not ambiguous. Whether, given non-ambiguity, the Court defers to the Appellate Division's interpretation, or not, a "plain language," reading of the statute by the Court itself would result in a finding identical to that reached by the Division. There is no need, as argued by the Appellant, to insert hidden meanings, or words that do not appear in the text, to ascertain the legislative intent.

2. The Appellant's reliance on dicta in *Ladner v. Mason Mitchell Trucking* to the effect that the purpose of the death benefit statute is to compensate dependents for economic loss is incomplete.

The Appellee has never argued that she was economically dependent upon Mr. Nadeau at the time of his death, nor that she suffered economic loss at that time. It is also true that a purpose, but not the only purpose, of the Workers'

Compensation Act death benefit statute, is to compensate for economic loss *or presumed economic loss.*

The Appellee relies on *Ladner v. Mason Mitchell Trucking Co*., 434 A.2d 37 (Me. 1981) for the unremarkable proposition noted above. Ladner involved a claim for death benefits made by the decedent's children who were living apart from him due to a divorce. It appears from the text of the case that the date of injury was the same as the date of death.

As part of the divorce judgement, the decedent was required to pay child support. He defaulted on this responsibility prior to his death. Because of this default, the children were receiving essentially no money from him at the time of death, nor was any support expected in the future. The Commissioner ruled, reasoning the children should not be deprived of death benefits due to the bad actions of the decedent, that the mere legal obligation created by the divorce judgement was sufficient to establish *conclusive* dependency under then-applicable 39 M.R.S. § 20(4)(C) (predecessor statute to 39-A M.R.S. § 102(8)(C)).

The Court disagreed, holding that the mere legal obligation to provide support was insufficient to qualify for the statutory conclusive presumption found in § 2(4): "actually dependent in any way at the time of the injury to said parent… ." The Court reinforced its decision by stating that the purpose of death benefits "is to compensate dependents for their economic loss resulting from the

employee's death … [because] the claimants suffered no economic loss from the employee's death … [they] are not entitled to death benefits." *Ladner v. Mason Mitchell Trucking Co*., 434 A.2d at 41. The children were therefore denied the benefit of the conclusive presumption.

The case is distinguishable from our case since the Appellant concedes Carol Brewster is entitled to the conclusive presumption found in § 102(8)A). Indeed, there is no dispute that Carol Brewster was, without question, financially dependent upon Mr. Nadeau at the time of the injury. If she had not been financially dependent upon Mr. Nadeau at the time of the injury, this litigation would likely not have been brought.

Although the Court in *Ladner* correctly stated the law, later cases clarify that the purpose of the Act is not solely to compensate for actual economic loss, but also for *presumed* loss. *See, e.g., Mills v. Traveler's Inc*., 567 A.2d 446, 448 (Me. 1989) *citing Ladner v. Mason Mitchell Trucking*, 434 A.2d 37, 40 (Me. 1981)) ("When a worker is injured in the course of employment, he receives compensation benefits *regardless of fault.*") (emphasis added).

As noted in the Appellee's main brief at paragraphs 11 - 14, there are numerous instances in the Act whereby the general purpose of the Act will sometimes yield in the face of other clearly delineated legislative or administrative priorities – i..e., the marital relationship at the time of injury, the so-called 14 day

rule, presumptions of total incapacity for severe injuries, non-coordination of such injuries, and firefighter presumptions.

Our case illustrates the operation of one such conclusive presumption[3] that clearly favors the dependent spouse of an injured worker at the time of that injury – regardless of what her actual economic relationship was to Mr. Nadeau at the time of that injury.

3. It is far from "evident" that the Legislature intended the "spouse-claimant" to be a widow or widower; so long as the spouse at the time of injury is not, or has not become, the dependent of another at the time of the injured worker's death, § 58 death benefits accrue to a spouse dependent at the time of the injury.

The Appellant argues the Legislature intended that at the time of the employee's death, the "eligible spouse" of that employee must married to the decedent, and thus a widow or widower, not yet remarried. "[I]t is evident that the Legislature intended the spouse claimant to be [sic] widow or widower." Brief of Appellant, pp 19, 23.

The plain language of § 58 suggests otherwise. Section 58 is framed in the conditional: "*If* the dependent [as determined by reference to the applicable definition of dependent] of the employee to whom compensation will be payable is the widow of such employee… ." The implication of this conditional phrase is that the dependent might not be a widow, especially if that person then "becomes a

[3] A conclusive presumption, of course, "is not really a presumption at all. It is a rule of law. The nonexistence of the fact 'presumed' is immaterial. *Albee's Case*, 128 Me 126, 128, 145 A. 742, 743 (1929)." *Ladner v. Mason Mitchell Trucking Co*., 434 A.2d at 42.

dependent of another person." This phrasing suggests awareness of an interim period whereby a dependent spouse might not be a widow or widower.[4]

Indeed, § 102(8)(A), the (only) applicable definitional statute contemplates several different scenarios relative to determining who is "conclusively presumed" to be wholly dependent upon the employee at the time of that person's death. Each of those possibilities also assumes in the first instance dependency at the time of the injury.

The first possibility is the equivalent of a widow or widower – "A spouse of the deceased employee who was living with the employee at the time of the employee's death." The second possibility is a spouse "who was living apart from the employee for a justifiable cause or because the spouse had been deserted by the employee [at the time of death]." The final possibility is that which applies to our case: "or who was actually dependent in any way upon the employee at the time of the injury [regardless of status at the time of death]." This final possibility elevates "actual" dependence regardless of marital status at the time of death, unless there is dependency upon another.[5]

[4] The Appellate Division below affirmed the ALJ's finding that Mrs. Brewster had not become the dependent of another at the time of Mr. Nadeau's death. *App*. 12-13. That finding has not been appealed.
[5]Due to the date of injury in our case, and due to the changes made to the Act in 1992, there is no applicable statutory definition of the term "dependent upon another." 39 M.R.S.A. § 2(10) was repealed 1992 . *See* 39-A M.R.S. § A-10(1). 39-A M.R.S. § 102(9) only applies to death cases arising under 39-A M.R.S. § 215.

"Dependency upon another" is the clearly delineated statutory "guardrail" specifically set out in the statute meant to cut-short, or prevent, an otherwise qualified ex-spouse (who was dependent at the time of the injury) from continuing to receive death benefits. This interpretation avoids having to read into § 58 hidden words or hidden meanings (i.e., dependency at the time of death).

In sum, the Appellee does not dispute that dependency at the time of death can sometimes impact the death benefit analysis, as noted above. The Legislature is obviously capable of making the appropriate distinctions. However, under the facts of our case, dependency at the time of injury is the only criteria at play.

If the facts of our case are deemed by this Court to somehow fall outside the neat (if not intertwined) boundaries of Titles 39 and 39-A, the final paragraph of § 102(8)(A) provides a "fail-safe" provision:

> "In all other cases, questions of total or partial dependency must be determined in accordance with the fact as the fact was at the time of the injury."

CONCLUSION

Whether viewed as ambiguous or non-ambiguous, the Court should ultimately adopt a "plain language" approach to resolving the question of the meaning to attach to the second clause of § 58: "the employer shall pay the dependents of the employee… ." By applying the plain language, the Court will be implementing the intent of the Legislature.

The Appellant argues that the Court should read into that clause otherwise hidden language to the effect that the dependent must be a dependent at the time death, in addition to the time of injury (as stated explicitly in the third clause). In the absence of language in the statute supporting such a reading, it should be rejected. The Legislature could have, but did not, write such language into the statute.

The Appellant asserts in its main brief that "[t]he 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." Appellant's Brief, at 25. The Appellee agrees with this general formulation. However, the Appellate Division obviously did not fail "to resolve this question." Rather, it definitively resolved the question in a thorough and logical manner, just not as the Appellant would have liked.

Dated at Freeport, Maine this 18th day of September, 2025

/s/ James J. MacAdam, Esq.
James J. MacAdam, Esq.
Bar No. 2484
Counsel for Carol (Nadeau) Brewster
Employee/Appellee

MacAdam Law Offices, P.A.
45 Mallett Drive
Freeport, Maine 04032
207-772-2220

CERTIFICATE OF SERVICE

I, James J. MacAdam, Attorney for the Employee/Appellee in the above matter, hereby certify that I have made service of the foregoing Brief on Behalf of Employee/Appellee by serving one (1) copy upon Daniel F. Gilligan, Esq., Troubh Heisler. P.O. Box 1150, Scarborough, Maine 04074 and Richard Hewes, General Counsel, Workers' Compensation Board, 27 State House Station, Augusta, Maine 04333 by U.S. Postal Service, postage prepaid, on the 18th day of September, 2025.

By: */s/ James J. MacAdam, Esq.*
James J. MacAdam, Esq.
Bar No. 2484
Counsel for Carol (Nadeau) Brewster
Employee/Appellee