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

BRIEF ON BEHALF OF EMPLOYEE/APPELLEE

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TABLE OF CONTENTS

Page No.

TABLE OF AUTHORITIES

Page No.

Cases

Statutes

Rules

Other Authorities

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Carol (Nadeau) Brewster married the decedent-injured worker, Donald Nadeau, in 1971. They lived together, and were married, for the following 26 years (1971 – 1997). The couple had three children and, until the work injury giving rise to this litigation, Mr. Nadeau was a reliable and dependable father and husband. *(App. 43, 48).*

Unfortunately, Mr. Nadeau sustained a serious injury on April 28, 1985, when he slipped and fell on his back while working for his long-time employer, S.D. Warren. Mr. Nadeau ultimately underwent several surgeries related to the injury. Multiple body parts were adversely affected, including the back of his head, neck, right shoulder, bilateral upper extremities, back, hip, and knee. He developed severe chronic pain that in turn caused significant mobility problems. *(App. 115, 132).* Because he had a hard time moving, Mr. Nadeau became obese over the ensuing years. *(App. 123).* His personality changed from that of a likable, reliable Dad, to someone who was depressed, unreliable and unpredictable. *(App. 48).* He drank, ingested pain pills, and stayed up late at night. In other words, he was a nightmare to live with. *(App. 132-133).* For these reasons, Ms. (Nadeau) Brewster divorced him in 1997. *(App 47-48)*

During the last seven years of his life, Mr. Nadeau was bedridden. He could not walk unassisted from 2014 through the time of his death in 2020. *(App. 127).* Although he had a state-of-the-art medical grade bed at home and good care, he developed treatment-resistant and infected bedsores. *(App. 116).* Indeed, his daughter, a nurse, cared for him towards the end of his life. She observed the bedsores as weeping, oozing wounds on the back of his shoulder blade. *(App. 121).* Despite surgical intervention, the bedsores persisted, with infection ultimately setting in. *(App. 112).*

Mr. Nadeau was sent home from the hospital on September 11, 2020, and died the next day. The direct causes of death were septic shock, respiratory failure, and organ failure. *(App. 117).* There is no dispute that the death was caused by complications arising from the 1985 work injury.

When Ms. (Nadeau) Brewster married Mr. Nadeau, she was totally dependent upon him for support. *(App. 43-47).* He was a full-time S.D. Warren paper mill worker, and she was an aspiring nursing student. From the birth of their first child through the date of the work injury in 1985, she only worked part-time as a nurse. She was the primary caretaker of the children and earned substantially less than Mr. Nadeau at the time of his injury. *(App. 46).*

As far as money was concerned, during the time frame of the work injury, the couple had only a joint checking account and a joint savings account. They paid the bills from the joint accounts, and their cars and home were in both of their names. *(App. 46-47)*.

ALJ Stovall found, after hearing, based upon the overwhelming weight of the evidence, that Ms. (Nadeau) Brewster was "dependent" upon Mr. Nadeau for support "at the time of his injury," pursuant to 39 M.R.S. § 58 (in effect at the time of the work injury).[1] *(App.25)*. Dependency status is, of course, conclusively presumed under the facts of this case due to the operation of 39-A M.R.S. §102(8)(A) ("a spouse…who was actually dependent in any way at the time of the injury."). *(App. 25)*.

After the divorce in 1997, Carol (Nadeau) Brewster worked more to support herself. She began working three, 12-hour shifts as a registered nurse in the cardiology department at Maine Medical Center and went on to work for Maine Medical Center in that capacity for 41 years. *(App. 49-50)*.

Approximately 14 years after the divorce, in 1997, Ms. (Nadeau) Brewster married Tom Brewster. Instead of mingling their assets and keeping multiple joint

[1] Under 39-A M.R.S. § A-10 (1), "[w]ith regard to matters in which the injury occurred prior to January 1, 1993, the applicable provisions of former Title 39 apply in place of Title 39-A, §§ 211, 212, 213, 214, 215, 221, 306 and 325." Section 215, the current death benefit statute, is implicated for purposes of this case; that is, it does not apply. The death benefit statute in effect at the time of Mr. Nadeau's injury, and applicable to this case, is 39 M.R.S.A. § 58. Mr. Nadeau was injured just a couple of months before § 58 was repealed and replaced with 39 M.R.S. § 58-A, containing substantially similar language.

accounts, Carol and Tom agreed to keep separate accounts for their own money and contribute equal amounts to a single joint account, which was used to pay for their joint living expenses. They also both owned their own condominiums, and each paid for their own units. The units were conveniently located next to one another, and they were eventually physically combined. *(App. 52-53; 57-58).*

Although this was a somewhat unusual marital arrangement, it was both Carol Brewster's and Mr. Brewster's second marriage and they had learned from their first marriages. *(App. 94).* It has worked well. Despite remarrying, Carol Brewster never became financially dependent upon Tom Brewster. *(App. 98)*

ALJ Stovall examined the evidence at hearing and accepted Carol's testimony as credible regarding her continuing financial independence and lack of dependence, despite remarriage. The ALJ found as a fact that Carol Brewster had not become the "dependent of another person," pursuant to 39 M.R.S. § 58.[2] *(App. 25-26).*

Because Carol Brewster was dependent upon Mr. Nadeau at the time of the 1985 injury and was not the dependent of another person at the time of his death, the ALJ awarded her death benefits, pursuant to § 58, from September 12, 2020, and continuing. *(App. 26).*

[2] Based upon a review of the employer's Notice of Appeal, this factual finding has not been appealed. *(App. 172).* "As provided by statute, there shall be no appeal upon findings of fact." M.R. App. P. 23(b)(3).

The employer appealed both aspects of the ALJ's decision to the Board's Appellate Division; i.e., 1) that dependency status must be determined at the time of the injury, and 2) that Carol Brewster was not the dependent of another at the time of death.

A majority of the Division panel affirmed the ALJ's decision in all respects. The Division, relying upon the plain language of the applicable statute and nearly on-point Law Court precedent, as well as concordant Appellate Division persuasive authority, agreed that dependency status, for purposes of awarding death benefits, must be determined at the time of the injury, and that Carol Brewster was without question dependent upon Mr. Nadeau at that time. The Division rejected the argument raised by the employer that dependency upon the injured worker must be ascertained at both the time of the injury *and* the time of death (so-called "dual dependency"). The Division also affirmed the ALJ's finding of fact that Carol Brewster had not become the dependent of another upon, or during, her marriage to Tom Brewster. *(App. 5-6)*.

The employer thereafter filed its Notice of Appeal. The appeal focuses on the Division's determination that dependency status under § 58 must be determined

only at the time of the injury, and that there is no statutory requirement that dependency must also be established at the time of the employee's death.[3]

[3] Because § 58 cases will only arise with respect to dates of injury now 40 years old, and § 58-A (virtually identical language) cases with respect to dates of injury 33 years old, the very specific issue of statutory interpretation now before the Court (§ 58) is not likely to recur. However, the Appellee agrees with the Appellant's statement in its Petition for Appellate Review that 39-A M.R.S. § 215 is also implicated: "The Appellate Division committed legal error by interpreting former 39 M.R.S.A. § 58, and by implication the current death benefit statute, 39-A M.R.S. § 215, to require dependency at time of injury only, and not also at time of death, to qualify for weekly death benefit payments. … The Appellate Division's erroneous interpretation of 39 M.R.S. § 58, and by reference, current version of 39-A M.R.S. § 215, establishes a new class of compensation recipients… ." *Appellant's Petition for Appellate Review*, 3/7/2025, at 2, 5 (footnote omitted).

ISSUE PRESENTED FOR REVIEW

Whether the Appellate Division erred as a matter of law by holding, pursuant to 39 M.R.S. § 58, that a spouse who is conclusively presumed to have been dependent upon the employee at the time of the injury, and who at the time of the employee's death has become an ex-spouse, but is not dependent upon another person, must also prove dependency upon the employee at the time of the employee's death in order to qualify for statutory death benefits.

SUMMARY OF APPELLEE'S ARGUMENT

The Appellate Division of the Workers' Compensation Board did not commit legal error when it ruled, consistent with the plain language of 39 M.R.S. § 58, and 39-A M.R.S. § 102(8)(A), as well as on-point Law Court precedent and Appellate Division persuasive authority, that a conclusively presumed dependent spouse of the injured worker at the time of the injury need only prove dependency at the time of that injury, as opposed to both the time of the injury and the time of the injured worker's death in order to qualify for § 58 death benefits.

APPELLEE'S ARGUMENT

I. Standard of Review: "Appropriate Deference"

1. As the Appellee, through undersigned counsel, stated in her unsuccessful argument against leave for an appeal, the Appellate Division did not err in its legal analysis of the dependency issue. The Division discerned the intent of the Legislature by reference to the plain language of the applicable statutory provisions. It reasonably applied controlling judicial and persuasive administrative

precedent. The Appellee agrees with the Division's finding that the statutes and the statutory scheme alike are unambiguous.[4]

2. The Court reviews "decisions of the Appellate Division according to established principles of administrative law, except with regard to the hearing officer's or ALJ's factual findings." *Michaud v. Caribou Ford-Mercury,* 2024 ME 74, P. 12, 327 A.3d 38, *quoting Bailey v. City of Lewiston*, 2017 ME 160, P9, 168 A.3d 762. The Court further explained in *Kroeger v. Dep't. of Envtl. Prot*., 2005 ME 50, P7, 870 A.2d 566, citing the APA and applying "established principles" of administrative law under the APA, that an agency's decision will not be vacated

> "unless it: violates the Constitution or statutes; exceeds the agency's authority; is procedurally unlawful; is arbitrary or capricious; constitutes an abuse of discretion; is affected by bias or an error of

[4] The Division observed in a footnote, though, that:

> "Even if we were to find an ambiguity in the statute and to consider the legislative history, the outcome would remain the same. 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 the injury." *See* P.L. 1965, ch. 408, section 7; P.L. 1971, ch.225, section 4; P.L. 1973, ch. 543, section 3; P.L. 1973, ch. 557, section 4; P.L. 1975 ch. 493, section 3; P.L. 1975, ch. 701, section 24; P.L. 1975 ch. 770, section 217; P.L. 1983, ch. 479, section 10; P.L. 1985, ch. 372, section A24; P.L. 1991, ch. 885, section A7; P.L. 1991, ch. 885, section 9 – 11."

(App. 11)

An examination of the legislative history above reveals a consistent reference to dependency on the date or time of injury/accident as the touchstone for the receipt of death benefits.

Even before 1965, the time of the injury was the key time period to establish dependency. See P.L. 1915, c. 295, section 14: "If death results from the injury, the employer shall pay to the dependents of the employee, wholly dependent upon his earnings for support at the time of the injury… ." Section 2 provided that "Dependents shall mean members of the employee's family or next of kin who were wholly or partially dependent upon his earnings for support at the time of the injury."

law; or is unsupported by the evidence in the record. 5 M.R.S. § 11007 (4)(C) (2002)."

3. On questions of law, such as are present herein, the Court reviews decisions "of the Appellate Division directly and deferentially 'affording appropriate deference to the Appellate Division's reasonable interpretation of the workers' compensation statute and … uphold[ing] the Appellate Division's interpretation unless the plain language of the statute and its legislative history compel a contrary result.'" *Somers v. S.D. Warren*, 2020 ME 137, P13, 242 A.3d 1091 (citing *Bailey v. City of Lewiston*, 2017 ME 160, P9). "In interpreting the Workers' Compensation Act, we 'look to the plain meaning of the statutory language, and construe that language to avoid absurd, illogical or inconsistent results. … The Act must be construed neutrally so as not to favor either the employee or the employer." *Michaud v. Caribou Ford-Mercury, Inc*., 2024 ME 74, P12, 327 A.3d 38 (citations omitted). "The ultimate goal is to give effect to the Legislature's intent." *Bosse v. Sargent Corp*., 2025 ME 74, P12.[5]

[5] The Court in *Bosse v. Sargent Corp.*, 2025 ME 74, n.7, dropped a footnote 7 indicating that "we do not defer to an interpretation of an administrative body unless and until we have determined that the statutory language is ambiguous and we have first attempted unsuccessfully to resolve that ambiguity by looking at the statute's purpose and structure… ." It is unclear if this footnote was intended to modify or overrule *Somers* since in that case some deference was afforded to the Division's "reasonable interpretation of the workers' compensation statute" without a prior finding that the statutes and rules at issue were ambiguous. *See Somers v. SD Warren,* 2020 ME 137, PP 12 – 22.

4. Finally, the Division applied both Law Court precedent and Appellate Division decisions dealing with the subject matter of this appeal in reaching the decision that it did. "[W]hen the ultimate issue is the proper interpretation of judicial precedent, we are not obligated to defer to the Appellate Division's interpretation of that precedent. … we interpret judicial precedent de novo." *Michaud v. Caribou Ford-Mercury, Inc.*, 2024 ME 74, P13. Nevertheless, the Appellee respectfully submits that the Division's application of the key judicial precedent in this case, *Cribben v. Central Maine Home Improvements*, 2000 ME 124, 754 A.2d 350 (Me. 2000), was straightforward and correct. Further, as argued further below, *Cribben* was relied upon by the Appellate Division in *Foley v. Thermal Engineering*, Me. WCB Dec. 15-2 (App. Div. 2015) relative to the issue of whether dependency at the time of the injury (alone) was required to establish an entitlement to death benefits. The Division held, consistent with *Cribben*, that such dependency was sufficient. Thus, *Cribben* has become established workers' compensation law and is embedded in workers' compensation practice before the Board.

II. Relevant statutory provisions: neither § 58 nor § 102(8) is ambiguous – dependency status for the purpose of awarding death benefits must be determined at the time of the injury, and only the time of the injury.

5. Title 39 M.R.S. § 58, the law in effect at the time of the employee's April 28, 1985 injury, reads in pertinent part:

> "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 2/3 of his average gross weekly wages, earnings or salary."

6. Section 58, the death benefit statute itself, applies to this case due to the employee's date of injury. However, 39-A M.R.S. § 102(8)(A) applies with respect to discerning the definition of a dependent[6]:

> "8. Dependent. 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 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, … or who was actually dependent in any way upon the employee *at the time of the injury*."

[emphasis added]

7. This language is clear and unambiguous. The employer nevertheless argues due to a strained reading of § 58 that an otherwise qualified dependent –

[6] See footnote 1, *supra*.

dependent at the time of the injury – must also be a dependent at the time of the employee's death resulting from that injury. Carol Brewster was, of course, no longer Mr. Nadeau's dependent at the time of his death. The statute does contemplate the possibility that a spouse living with the employee at the time of death could be "conclusively presumed" to be a dependent. However, § 102(8)(A) is written in the alternative (not the conjunctive): "*or* who was actually dependent in any way upon the employee at the time of the injury." (emphasis added)

8. It is this novel "double dependency" theory that lies at the heart of the employer's appeal. It contends that the first reference to "dependents" in § 58 refers to dependents at the time of death, as opposed to the time of the injury. The employer argued below, and may argue to this Court, that the two phrases in the statute are separated by a comma, and contends the first phrase – "dependent of the employee" – must therefore mean dependent at the time of death. Otherwise, it is argued, that clause is made superfluous by the second phrase – "dependent upon his earnings for support at the time of his injury."

9. This interpretation should be rejected, however, because it is inconsistent with the applicable definition of dependent in § 102(8)(A), which directly links to the date of injury, and only the date (or "time") of the injury. Further, there is nothing absurd or illogical about linkage to the date of injury. This

was a policy decision made by the Legislature many years ago (particularly with respect to marriage – i.e., a conclusive presumption), and carried forward to this day, resting in its current incarnation as part of 39-A M.R.S. § 215(1).[7] The date of injury is a familiar and critical reference point for numerous aspects of workers'

[7]Section 215 was enacted in 1992 as part of the complete overhaul of the worker's compensation system in Maine. *See generally*, 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, http://lldc.mainelegislature.org/Open/Rpts/kf3615_z99m243_1992_v1.pdf

Many of the changes recommended were based upon Michigan's workers' compensation system. With respect to death benefits, the major change was to limit benefits to 500 weeks, as opposed to the then-current lifetime benefits under § 58-A:

"Briefly, the current Maine system allows lifetime benefits to spouses (who do not remarry) while the proposed Michigan system generally limits these benefits to 500 weeks. In addition, there are various changes in presumptions of dependency. "

Blue Ribbon Commission, (unpaginated 18/25)

Nevertheless, § 215(1) also streamlined the language in prior § 58-A so that the alleged grammatical problems giving rise to the employer's "double dependency" argument were removed. This was also in keeping with the express language of analogous Michigan statutes, i.e., Mich. Comp. Laws – 418.321 and 418.341 (2025).

Section 215 (1) reads in relevant part for a date of injury prior to January 1, 2013:

If an injured employee's date of injury is prior to January 1, 2013 and if death results from the injury of the employee, the employer shall pay or cause to be paid 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… ."

The Michigan statutes from which § 215(1) is derived make it abundantly clear that the time of the injury is the touchstone upon which dependency status attaches for purposes of the award of death benefits, absent very specific and enumerated circumstances. For examples, MCL- 418.341 reads:

"**Questions as to who constitutes dependents and the extent of their dependency shall be determined as of the date of the injury to the employee, and their right to any death benefits shall become fixed as of such time, irrespective of any subsequent change in conditions except as specifically provided**… ."

See also Paige v. City of Sterling Heights, 476 Mich. 495, 720 NW2d 219, 233 ("Accordingly, under this statute [MCL - 418.341], the workers' compensation magistrate must determine whether there were persons dependent on the deceased employee, and the extent of such dependency, by looking at the circumstances at the time of the work-related injury – **not at the time of death**." (emphasis added).

The employer's assertion in its Petition for Appellate Review, at 11, that Maine will stand "oddly alone" absent the adoption of the so-called "double dependency" theory, is therefore incorrect.

compensation law, most notably with respect to establishing a right to benefits, and the payment of benefits. *See, e.g., 39-A M.R.S. §§ 205, 206, 212 ,213, and 214.*

10. Although perhaps inelegantly stated, the grammatical structure of the first sentence of § 58 is straightforward and unambiguous. It can be broken down as follows:

> a. "**If death results from the injury**": This is a conditional clause that introduces a condition.
>
> b. "**The employer shall pay**": This is the main clause, indicating the action that will be taken if the condition is met.
>
> c. "**The dependents of the employee**": This is the indirect object of the verb "pay." It refers to the individuals who will receive the payment. One must look to § 102(8) for the definition of dependent. There is no additional, or hidden, language regarding the date of death either explicitly, or by implication (as advocated by the employer).
>
> d. "**Dependent upon his earnings for support at the time of his injury**": This is a participial phrase modifying "the dependents of the employee." It provides additional information about their dependency on the employee's earnings. It makes crystal clear that the reference point for that dependency is the date of injury.
>
> e. "**A weekly payment equal to 2/3 his average gross weekly wages, earnings or salary**": This is the object of the verb "pay." It describes the nature and amount of the payment, which is equal to two-thirds of the employee's average gross weekly wages, earnings, or salary.

Because the language and structure of § 58 is unambiguous, grammatically logical, and not susceptible to different meanings or interpretations, there is no

cause to venture beyond its plain meaning. Contrary to the assertions of the employer, no "hidden" meaning concerning dependency at death can be discerned.

11. Finally, S.D. Warren, relying upon *Ladner v. Mason Mitchell Trucking*, 434 A.2d 37 (Me. 1981), is likely to argue that the Division's construction of the statute is contrary to its underlying purpose (and the purpose of workers' compensation benefits generally) – that is, to compensate for economic loss. The Appellee would agree that one purpose of § 58 is to compensate dependents for economic loss resulting from an employee's death related to a work injury, and that Carol Brewster, fortunately, did not suffer economic loss when her ex-husband died.

12. Nevertheless, despite the general purpose of the Act with respect to compensation for actual economic loss, that general purpose will sometimes yield in the face of other clearly delineated legislative or administrative priorities. The "conclusive presumption" found in § 102(8)(A) illustrates one such priority (i.e., the importance attached to the marital relationship), whereby proof of actual economic loss is unnecessary to prove dependency in the case of a spouse of an injured worker who lives with that worker (regardless of whether the spouse earns more money than the injured worker), a spouse who is living apart from the worker for a justifiable cause (or due to desertion) (also regardless of actual relative

earnings), or a spouse who is actually dependent "in any way at the time of the injury" – a very broad, inclusionary provision that is not tied directly to loss of earnings. *Cf., Bridgeman v. S.D. Warren*, 2010 ME 87, 872 A.2d 961 (upholding validity of 14-day rule; pursuant to plain language of rule, employee must be paid total benefits from the date of incapacity *regardless* of actual economic loss); *Doucette v. Hallsmith/Sysco Food Services*, Inc., 2011 ME 68, 21 A.3d 99 (upholding award of total benefits from date of alleged incapacity, despite lack of actual loss of earnings, due to 14 -day violation; "Disallowing the award when the employee suffers no actual loss of earnings as a result of the injury could thwart an essential purpose of the rule – to encourage timely filings by employers/insurers thereby facilitating the administrative process – in all cases, not just cases in which wage loss benefits must be paid.").[8]

13. Indeed, presumptions of all kinds, both rebuttable and conclusive, serve purposes other than to compensate for actual economic loss. For example, 39-A M.R.S. § 212(2) provides for a conclusive presumption for the payment of total incapacity benefits for 800 weeks, regardless of actual ability to earn (or

[8] For example, in *Doucette,* the employee made a 14-day claim. He provided the insurer with notice of that claim. The insurer failed to file a NOC until the 15th day after the notice. Consequently, the hearing officer awarded the employee $140,000, retroactive to the alleged date of incapacity, absent any proof of loss of earnings. Despite several Justices opining that the result was unfair, the majority nevertheless noted that the hearing officer made a finding of fact that the NOC was not filed until the 15th day, and that the Court would not disturb that finding of fact. The Court also stated that while the $140,000 award to the employee "appears unfair, possibly punitive, and contrary to some of the policy objectives of the Act … It is [nevertheless] beyond the authority of this Court … remedy this unfairness." Id. at P.28 (Levy, J., concurring).

economic loss) during that period. 39-A M.R.S. § 221 elevates "human factors" "in addition to the wage loss concept" associated with the award of benefits under §§ 212(2) and (3), over coordination of those benefits with an employee's receipt of social security or pension benefits. The rebuttable presumptions set forth in 39-A M.R.S. §§327 (inability to testify) and 328 (firefighter injuries) likewise promote more general, but still important, goals that are separate and distinct from compensation for actual economic loss. The mission statement of the Workers' Compensation Board, found in 39-A M.R.S. § 151-A, is broad: "to serve the employees and employers of the State fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation." That broad statement leaves room for competing interests to exist simultaneously in areas of both policy and law.

14. The Legislature has, however, adopted potential alternative statutory constraints, or guardrails, upon dependency status and the receipt of death benefits post-injury. A constraint litigated below was whether Carol Brewster had become "the dependent of another." After considerable fact-finding, the ALJ concluded

that Carol Brewster had not become the dependent of another, and the Division affirmed the ALJ's decision on this point.

III. Law Court precedent and persuasive authority from the Appellate Division point toward dependency at the time of injury as the sole criterion for the award of death benefits in this case.

15. The heart of both the ALJ's and the Division's decisions regarding the dependency issue on appeal was their references to, and reliance upon, the Law Court's decision in *Cribben v. Central Maine Home Improv*ements, 2000 ME 124, 754 A.2d 350 (Me. 2000) and a more recent Appellate Division case adhering to *Cribben*, *Foley v. Thermal Eng. Int'l, Inc*., Me. WCB Dec. No.15-2, PP9, 13 (App. Div. 2015) (applying § 215(1)).

16. In *Cribben,* the employee suffered a work injury in 1990. In 1992, the injured worker's daughter was born. In 1996, the injured worker and his wife obtained a divorce, with a requirement that the worker pay child support to his daughter. The injured worker died later in 1996. A family member then brought a petition for death benefits on behalf of the daughter. The Board granted the petition and awarded the daughter death benefits as a dependent *at the time of death*. The Law Court vacated the decree.

The Court, construing 39 M.R.S. § 58-A (virtually identical to its predecessor, § 58) concluded that to be entitled to death benefits, the daughter was

required to have been a dependent of the injured worker "at the time of the injury." *Cribben v. Central Maine Home Improvements,* 2000 ME 124, P6. The Court stated that for purposes of the death benefit statute, the terms "injury" and "death" are used to identify two different and distinct triggering events. *Id*. The word "death" referred to the fatality that gave rise to the award of benefits, but the word "injury" referred to that work- related injury precipitating, or causing, that fatality. *Id*. Because the daughter was not a dependent at the time of injury (she had not yet been born), the Court held that she was not entitled to death benefits: "While we recognize valid policy arguments in favor of the Board's interpretation, we are constrained by the statutory language." *Id*. at 352.

17. Faced with a similar legal issue 15 years later, the Appellate Division in *Foley v. Thermal Eng. Int'l Inc*., Me WCB Dec. No. 15-2. (App. Div. 2015) relied on *Cribben* to deny a dependent at the time of death (only), death benefits. The Division focused on the interplay between § 102(8) and § 215(2).

In *Foley*, a worker was injured in 2005. He was not married and had no children at the time of the injury. He and his future wife had a son in 2006. The couple married in 2008. The injured worker died in 2009 due to an overdose of medication that was at least in part related to the injury. His wife at the time of death filed a petition for death benefits.

The Board issued a decree and denied the wife death benefits because she was not a dependent of the deceased employee *at the time of injury*. The Appellate Division affirmed the Decree, relying upon the Court's statutory analysis in *Cribben*.

The Appellate Division noted pointedly that the phrase "at the time of the injury" is repeated multiple times in the definition of dependency contained in 39-A M.R.S. § 102(8): "The statute plainly requires dependency status to be determined at the time of the employee's injury." *Foley v. Thermal Eng. Int'l Inc*., WCB Dec. 15-2, P13. The Division declined to hold, as advocated by the employee, that the case was distinguishable from *Cribben:*

> "In *Cribben v. Central Maine Home Improvements*, 2000 ME 124, PP 5-6, 754 A.2d 350, the Law Court construed statutory language in former 39 M.R.S. § 58-A, a precursor to § 215(1), as requiring dependency at the time of injury to establish entitlement to death benefits, and held a child born after an employee's date of injury but before the date of death was not entitled to receive those benefits … Section 215(2) must be read in the context of the entire statutory scheme of which it is a part, which includes the definitional section. … The statute plainly requires dependency status to be determined at the time of the employee's injury."

Id. at PP 7 – 9.

18. While not specifically part of the holding in *Foley,* the Division noted that the final "catch-all" paragraph in § 102(8) recognizes that other unusual and unenumerated forms of dependency are possible, and that the date of injury is the

measure by which to establish such status: "In all other cases, questions of total and partial dependency must be determined in accordance with the fact as the fact was *at the time of the injury."* (emphasis added). *Id*. at P8.

19. It is possible that the employer will ask this Court to essentially overrule *Cribben,* thereby potentially discarding well-established principles of *stare decisis*. As can be seen from the discussion above regarding *Foley,* and now the instant matter, the *Cribben* decision has become part of the recent fabric of Maine workers' compensation law as it pertains to the complex area of death benefits. [9] "[W]e will apply rules articulated in our precedents 'unless the passage of time and changes in conditions justify reexamining the law stated in our prior opinion and reaching a different result.'" *Quirion v. Veilleux*, 2013 ME 50, P.6, 65 A.3d 1287, *quoting State v. Bromiley*, 2009 ME 110, P5, 983 A.2d 1068. Neither the "passage of time" nor "changes in conditions" would justify changing the rules at this juncture.

[9] For example, while not the focus of the case, and not explicitly relying on *Cribben*, Hearing Officer Pelletier in *Estate of Kevin Engstrom* v. *Daigle Oil Co*., 2010 ME Wrk. Comp LEXIS 478, grappled directly with the language of § 215(1), applied it consistent with *Cribben*, and reasoned that "[a]lthough § 215, and the definitional section, § 102(8) are hardly models of clarity, it is reasonably clear from the first sentence of § 215 that the first task for the Board to determine in this matter is whether or not there are any persons 'wholly dependent' upon the employee's earnings for support at the time of the injury."

CONCLUSION

20. The Court should affirm the Appellate Division's decision in all respects. The Division properly construed the relevant death benefit and definitional statutes to conclude that because Carol Brewster was without question Donald Nadeau's dependent at the time of his injury, that status alone (in the absence of becoming the dependent of another person) entitles her to death benefits linked to that injury. Dependency at the time of death is neither contemplated nor required by the statute in a case such as this. So-called "double-dependency" is simply not a part of Maine law. No hidden meanings should be "found" when the unambiguous and plain meaning is apparent. The Division also correctly applied prior Law Court precedent in arriving at its decision. That precedent, relied upon by the Division and the ALJs over the last 25 years, should be re-affirmed as good law today.

21. Finally, while the Appellee concedes that she has not suffered economic loss due to Mr. Nadeau's death, it should be recalled that she was his dependent spouse for 26 years, 12 of which were post-injury and loathsome because of Mr. Nadeau's substance abuse. She was fortunate to have had a good job post-divorce and hence able to make ends meet on her own, independent terms. The statutory scheme obviously places a high value on the fact of marriage at the

time of a work injury and all that implies. This legislative policy choice should not be disturbed.

Dated at Freeport, Maine this 5th day of September, 2025

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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 5th day of September, 2025.

By: */s/ James J. MacAdam, Esq.*
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