

State of New Hampshire Supreme Court

No. 2020-0185

2020 TERM

APPEAL OF THE ESTATE OF PETER DODIER

RULE 10 APPEAL FROM FINAL DECISION
OF DEPARTMENT OF LABOR,
WORKERS' COMPENSATION APPEALS BOARD

**REPLY BRIEF OF CLAIMANT/APPELLANT,
ESTATE OF PETER DODIER**

By: Anna Goulet Zimmerman, Esq.
Maureen Raiche Manning, Esq.
LAW OFFICE OF MANNING &
ZIMMERMAN, PLLC
87 Middle Street
Manchester, NH 03101
(603) 624-7200

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 3

APPLICABLE STATUES..... 3

ARGUMENT.....4

 1. JOANNA DODIER’S “LIST OF PRESSURES”
 IS SUBSTANTIATED BY THE EVIDENCE..... 4

 2. SUICIDE IS NOT BARRED BY THE EXCLUSION IN
 RSA 281-A:2, XI FOR INJURIES CAUSED BY
 WILLFUL INTENT TO INJURE ONESELF..... 8

CONCLUSION..... 12

REQUEST FOR ORAL ARGUMENT..... 13

CERTIFICATION OF COMPLIANCE WITH WORD LIMIT..... 13

CERTIFICATE OF SERVICE..... 13

APPENDED DOCUMENTS¹..... 14

¹ Each of the appended documents (excluding the statutes on Pg. 15) is also included in the certified record. Most were also attached to Appellant’s opening brief but are also appended hereto for convenience and easy of reference.

TABLE OF AUTHORITIES

New Hampshire Cases

Boody v. K. & C. Manufacturing Co., 77 N.H. 208 (1914)..... 10

Cutter v. Hutchinson Bldg. & Lumber Co., 102 N.H. 14, (1959)..... 10

Appeal of Estate of William Quinn, NH S. Ct. Case No. 2018-03101
(Decided, August 20, 2019)..... 10

Riverbend Condo Association v. Landscaping and Property Management,
NH S. Ct. Case No. 2019-0264 (Decided June 5, 2020).....9

Out of State Cases

Dir., Office of Workers' Comp. Programs v. Cooper Assoc. Inc.,
607 F.2d 1385 (D.C. Cir. 1979)..... 10

George W. Jackson Mental Health Center v. Lambie,
898 S.W.2d 479(Ark. App. 1995)..... 11

Kahle v. Plochman, Inc., 428 A.2d 913 (N.J. 1981)..... 11

Kealoha v. Director, Office of Workers' Compensation Programs,
713 F. 3d 521 (9th Cir. 2013).....10, 11

In re Sponatski, 108 N.E. 466 (Mass. 1915)..... 10

New Hampshire Statutes

RSA 281-A:2, XI..... 8

Out of State Statutes

M.G.L. c. 152 §26-A..... 10

ARGUMENT

1. **JOANNA DODIER’S “LIST OF PRESSURES” IS SUBSTANTIATED BY THE EVIDENCE**

Instead of focusing on the medical records themselves – which make it clear that work is the source of Peter Dodier’s stress, Appellee focuses on the *List of Pressures At Work As Described by Joanna Dodier* to suggest that the facts listed are inaccurate and that Appellant is presenting a “false narrative” to the Court.

Appellant would show that its case is not dependent upon this *List*, and that contemporaneous medical records should be given substantially more weight than this *List*. Nonetheless, the *List*, which represents Joanna Dodier’s perception of her husband’s stressors before his death, is substantially supported by the evidence. Appellant replies in turn to each alleged inaccuracy as asserted by Appellee, starting on page 17 of the Appellee’s brief, as follows:

A. Mrs. Dodier asserted that the claimant worked 12-hour days:

Appellees dispute that Peter Dodier was working 12 hour days, looking to the testimony of his brother that his car would usually be gone by 7:00 a.m. (there was no testimony regarding how early Peter Dodier actually left, just that he was gone by this time) and was home at 5:30 p.m. However, this simplistic analysis disregards (a) Peter’s own representation to his doctors regarding the number of hours worked each week² (Appended at Pg. 31); (b) co-worker David Parker’s testimony that Peter “[W]orked long hours. We all did. Peter did – he would oftentimes be the first person – always the first person in the office and the last person to leave.” (Hearing Transcript, Page 198, Lines 7-10, Appended at Pg. 30); (c) testimony of a former co-

² This form, completed by Peter Dodier at Anna Jacques Hospital on 2/24/2017, indicates he worked either 50 or 60 hours a week – the writing is unclear on which number Mr. Dodier wrote.

worker, Matt Chrisom, confirming that “Peter was the type of person that was the first person in the office and the last person to leave.” (Hearing Transcript, Page 155, Lines 21-23, Appended at Pg. 28); and (d) work which was done at home, after hours, on his work computer or by phone – such as referenced in an April 11, 2017 text message to Joanna Dodier, before Katie Painter knew she would be called to testify against her employer, where Katie wrote: “I spoke about the no vacations, how we always had to plan and make sure we had our phones the entire time. How support is absolutely needed.” (Appended at Pg. 33). When asked about this at her deposition, Katie admitted that she and Peter Dodier “made sure we had our phones the entire time because that’s how Pete and I worked together.” (Painter Deposition, page 62, lines 3-6, Appended at Pg. 25).

B. Mrs. Dodier asserted that the decedent sometimes worked from home on the weekends using the company laptop: Appellee acknowledges in its brief that there were 14 emails sent on weekends between August 20, 2016 and March 5, 2017, including several to Peter Dodier himself – clearly demonstrating that at times he was working from home, on weekends, including emails of some type to himself (presumably reminders, etc.).

C. Mrs. Dodier asserts that the decedent was asked to give a presentation on a new computer system: There is no dispute that a new software system was being implemented. On Friday, March 10, 2017, Peter Dodier and Katie Painter had a 90-120 minute training session at work about the implementation of the new computer system, OASYS. Pages 44-45 of Painter Deposition, Appended at Pgs. 22-23). David Parker testified that “They converted to a new computer system, Oasis, and -- for the reporting, and Peter was having difficulty with that because it wasn't as easy as the old system, and he was having difficulty mastering it, and it was

taking too long to enter the information....” (Hearing Transcript, Page 192, Lines 18-23, Appended at Pg. 29). Mrs. Dodier explained:

Q. ...the statement about Peter having to give a presentation for Oasis, what was that based on?

A. Just our conversations and the way I understood when he was telling me.

Q. When was it that Peter was most stressed out about the Oasis system?

A. The Friday night before his death, he was on the computer for hours. I went to bed well before him, and he was fixated on this Oasis program.

(Hearing Transcript, Page 146, Lines 5-15, Appended at Pg. 27).

With Peter deceased, we have no way of further clarifying what he meant regarding a presentation when he spoke to his wife, but her understanding that he was experiencing stress regarding the new computer system is certainly substantiated by the evidence.

D. Mrs. Dodier also claimed that the claimant felt pressure to increase revenue despite downsizing: Again, we know from the medical records in Appellant’s Brief that Peter Dodier felt pressure regarding revenue following the October 2016 meeting and that he perceived the company to be downsizing. In fact, there was substantial downsizing from the original company Peter was hired to work for in 2010 (Walsh Transportation Group “WTG”) before that company was sold to TTS Worldwide and then rebranded into OL USA. At the time he was hired, WTG was a “large operation” in Exeter and Peter Dodier was part of one sub-department with four people. (Katie Painter Deposition, page 16, Appended at Pg. 17). Katie Painter describes the downsizing of the Exeter location when the company became TTS Worldwide, including departments being eliminated, people leaving, and accounts she took over.

(Katie Painter Deposition, pages 27-31, Appended at Pgs. 18-19). We also know there were only three people left in the Exeter location – Peter Dodier, Katie Painter and David Parker – at the time of Peter’s death. Of these three, Peter Dodier had been instructed to put David Parker on a performance plan, which Peter Dodier believed was going to (and did) result in David Parker losing his job – further reducing the numbers in the office. In addition, Katie Painter was frequently absent, causing stress and additional work on Peter. (Summary of absences in January and February of 2017³ Appended at Pg. 32). Peter was obviously concerned about staff levels and asked, on March 8, 2017, to again revisit a prior request for additional help. (Appended at Pg. 35).

E. Mrs. Dodier falsely asserted that management “ordered” the decedent to fire Dave Parker: This is semantics. Peter Dodier was told to put David Parker on a performance plan which Peter Dodier knew David Parker couldn’t meet and would result in David Parker being fired – which was exactly the outcome which occurred. We know from the affidavit of Matt Chrisom, Peter’s former co-worker, that in January 2017, Peter “felt he was being pressured about likely needing to fire the salesman, who was battling cancer.” Moreover, Katie Painter confirmed in her deposition how stressful this situation was, testifying:

Peter and I both knew that he wasn’t going to produce sales-wise, you know, but he was going through cancer so that was just another stress.... Pete kept trying to help him, like, you know, motivate him to do sales and he just wasn’t so it was a stressful situation.”
(emphasis added).

(Painter Deposition, page 51, lines 10-18, Appended at Pg. 24).

³ This summary was compiled from the text messages between Katie Painter and Peter Dodier. Copies were appended to Appellant’s Opening Brief starting at Appendix Pg. 209

E. Mrs. Dodier falsely asserted that management declined to let the decedent hire another employee: In asserting this as a falsehood, the Appellee looks to a November budget, but disregards the email of March 8, 2017, much closer in time to his death, that Peter sent to Carrie Murphy and Alan Baer which included the following:

I know revenue is king and we want the business before we can add people, but I would like to revisit bringing Judy on if she is still available.... I wouldn't ask if I didn't think it was important especially when we have one person who is out especially for more than one day. (emphasis added)

(Appended at Pg. 35). This confirms that Peter Dodier was asking for additional help, and the term “revisit” certainly indicates that this was a request that had been made in the past and rejected.

F. Mrs. Dodier also asserted that the decedent has a scheduled vacation for December of 2016 which he could not take to [sic] his co-worker being sick: The fact that a request for time off was not made is in no way inconsistent with the notion that Peter Dodier was planning to take vacation – as he typically did around Christmas – but then was unable to due to Katie’s absence. Katie Painter confirmed Peter Dodier usually took vacation on December 28th, his son’s birthday and a date that had been important each year for him to take off. (Painter Deposition, page 40, Appended at Pg. 21). In fact, the evidence sited to by the Appellee confirms that Peter Dodier did not take vacation in December of 2016.

2. SUICIDE IS NOT BARRED BY THE EXCLUSION IN RSA 281-A:2, XI FOR INJURIES CAUSED BY WILLFUL INTENT TO INJURE ONESELF.

Appellee argues that RSA 281-A:2, XI, which excludes coverage for injuries “proximately caused by the employee's willful intention to injure himself or injure another,” applies to bar this claim. The Estate of Peter

Dodier is not disputing that Peter Dodier jumped off a bridge with the intent of ending his mental anguish and life. However, this suicide was a consequence of his work stress injury – the mental breakdown for which treatment was first sought on February 18, 2017. Thus, the question is not whether Peter Dodier intended to end his life, but, rather, whether the act of committing suicide is an independent intervening cause which cuts off the employer’s liability under the workers’ compensation statute.⁴

As there is no case law directly on point in New Hampshire,⁵ other jurisdictions are looked to for guidance on this issue of first impression. *Riverbend Condo Association v. Landscaping and Property Management*, NH S. Ct. Case No. 2019-0264 (Decided June 5, 2020).

In looking at how other jurisdictions have addressed this issue, there are two primary approaches. The older, most antiquated, and harshest rule is the *Sponatski* Rule, which allows recovery only when there is “an insanity of such violence as to cause the victim to take his own life through an uncontrollable impulse or in a delirium of frenzy 'without conscious

⁴ Although not a suicide case, this Court’s Opinion in Case No. 2018-03101, *Appeal of Estate of William Quinn*, NH. S. Ct. Case No. 2018-03101 (Decided August 20, 2019), provides an example of when intentional conduct after an injury (“acute intoxication by the combined effects of heroin and oxycodone” in that case) bars recovery. In *Quinn*, this Court upheld that Quinn’s intentional conduct in ingesting excessive amounts of heroin, oxycodone, and alcohol caused his death and was an “independent intervening cause” of his death.

⁵ In the context of suicide and workers’ compensation in any capacity, Appellant is only aware of two cases in New Hampshire, both of which are distinguishable from this case. In *Cutter v. Hutchinson Bldg. & Lumber Co.*, 102 N.H. 14 (1959), workers’ compensation benefits were denied for injuries suffered when an employee jumped out a second-floor window in an apparent suicide attempt. In *Boody v. K. & C. Manufacturing Co.*, 77 N.H. 208 (1914), an employee drowned and dicta referenced that if the employee had “jumped into the river to try to kill himself” then the death would not have been “accidental” within the meaning of the workers’ compensation law in effect at that time. However, in neither case was there any claim, assertion, or even discussion that either claimant had committed, or attempted to commit, suicide as a result of a work-related injury (mental or physical) or for any other work-related reason.

volition to produce death, having knowledge of the physical consequences of the act,' then there is a direct and unbroken causal connection between the physical injury and the death." *In re Sponatski*, 108 N.E. 466, 468 (Mass. 1915), Although a Massachusetts case, *Sponatski* has since been reversed legislatively by G.C. c. 152 §26-A. Once the predominant view, reflecting society's limited understanding of mental health issues in the early 1900s, this rule now appears to be strictly followed only in Missouri.⁶

By far the more common rule is known as the chain-of-causation rule. Under the rule, when the injury and its consequences directly result in the suicide, the suicide is compensable. Applying the Longshore Act, the 9th Circuit has held that: "Given the best-reasoned modern trend of case law, we hold that a suicide or injuries arising from a suicide attempt are compensable under the Longshore Act when there is a direct and unbroken chain of causation between a compensable work-related injury and the suicide attempt. The claimant need not demonstrate that the suicide or attempt stemmed from an irresistible suicidal impulse. The chain of causation rule accords with our modern understanding of psychiatry." *Kealoha v. Director, Office of Workers' Compensation Programs*, 713 F.3d 521, 524-525 (9th Cir. 2013); See also *Dir., Office of Workers' Comp. Programs v. Cooper Assoc. Inc.*, 607 F.2d 1385, 1387-1388 (D.C. Cir. 1979) (Upheld compensation award under Longshore Act to employee who became depressed and committed suicide following business decline). These federal cases are particularly instructive as the Longshore Act was

⁶ There is a Vermont Supreme Court case applying *Sponatski* but, per the attached Department-level decision from 2009 (Appended at Pg. 43), the Vermont Department of Labor has questioned whether this would still be the law and declined to follow this standard. Two other states, Louisiana and Texas, follow modified versions of *Sponatski*, which are much more expansive than the original rule. Applying the Louisiana standard or the Texas standard should still result in a finding of compensability in this case. Cites to cases in Missouri, Louisiana, Texas, and Vermont are included in the chart which was Appendix A to Claimant's written closing (Appended at Pg. 34).

intended to provide coverage to workers not covered by states, but with intent to provide the same remedies as if killed or injured in the course of their employment in most states. *Kealoha*, 713 F.3d at 525, footnote 2.

Appended hereto is a summary of the case law Appellant's counsel compiled from each state, originally provided to the Board as a part of Claimant's written closing. (Appended at Pg. 36). In almost every case where suicide was found to be compensable, there was a statute which contained the same exclusion for intentional injury as that seen in New Hampshire. In no case was this statutory language a bar to recovery.

For example, in *George W. Jackson Mental Health Center v. Lambie*, 898 S.W.2d 479, (Ark. App. 1995) the Court upheld benefits for a suicide arising from work stress, quoting *1A Arthur Larson, The Law of Workmen's Compensation*, § 36.30 for the proposition that “[T]he intervening cause issue turns not on the employee's knowledge that he is killing himself, but rather on the existence of an unbroken chain of causation from the injury to the suicide.... [I]f the first cause produces the second cause, the second cause is not an independent intervening cause. The question whether the actor appreciated the consequences of his act should not be decisive on the fundamental question whether that act was the natural and foreseeable result of the first injury.”

New Jersey explains the chain-of-causation rule as follows: “the chain-of-causation test is a more realistic and reasonable standard than the *Sponatski* rule.... Under the rule we adopt today an employee's death by suicide is compensable where the original work-connected injuries result in the employee's becoming dominated by a disturbance of mind directly caused by his or her injury and its consequences, such as extreme pain and despair, of such severity as to override normal rational judgment. A suicide committed by an employee suffering from such disturbance of mind is not

to be considered ‘intentional’ ... even though the act itself may be volitional.” *Kahle v. Plochman, Inc.*, 428 A.2d 913, 917 (N.J. 1981).

As outlined in detail in Appellant’s original Brief, Peter Dodier did not just wake up one day and take his life. The tragic end to his life was the result of serious and pervasive depression and anxiety caused by his work-related stress, and for which Peter Dodier first treated on February 18, 2017. Peter Dodier began to speak of taking his own life within days of his mental breakdown, specifically discussing jumping off a bridge; and his suicide can only be seen as a tragic, though direct and natural, result of his work stress injury.

CONCLUSION

For the reasons set forth above and in Appellant’s opening brief, Appellant requests that the decision of the Compensation Appeals Board be reversed, find that suicide can be compensable, and the case be remanded for proceedings consistent with the Court’s decision.

Respectfully submitted by:
Estate of Peter Dodier

Through his attorney
LAW OFFICE OF MANNING &
ZIMMERMAN, PLLC

Dated: October 15, 2020 By: /s/Anna Goulet Zimmerman
Anna Goulet Zimmerman
NH Bar ID No. 18407
Maureen Raiche Manning
NH Bar ID No. 2090
87 Middle Street
Manchester, NH 03101
Anna@MZLawNH.com
(603) 624-7200

REQUEST FOR ORAL ARGUMENT

The Appellant, Estate of Peter Dodier, requests fifteen (15) minutes of oral argument in this case. Attorney Anna Goulet Zimmerman will present oral argument on behalf of the Appellant.

Dated: October 15, 2020

/s/ Anna Goulet Zimmerman
Anna Goulet Zimmerman

CERTIFICATION OF COMPLIANCE WITH WORD LIMIT

I hereby certify that the within reply brief contains under 3,000 words, excluding the cover page, table of contents, table of authorities, statutes, signature block, certificate of service, certificate of word count, and appendix.

Dated: October 15, 2020

/s/ Anna Goulet Zimmerman
Anna Goulet Zimmerman

CERTIFICATE OF SERVICE

I hereby certify that I have, this date, served a copy of the within Brief of the Appellant through the Court's electronic service system to Paul Kfoury, Esq. and Kirk Trombley, Esq., both of TROMBLEY & KFOURY, P.A., representing the Employer/Carrier, and to Gordon MacDonald, Attorney General; and two copies have been mailed to the New Hampshire Department of Labor, 95 Pleasant Street, Concord, NH 03301.

Dated: October 15, 2020

/s/ Anna Goulet Zimmerman
Anna Goulet Zimmerman

APPENDED DOCUMENTS

New Hampshire Statute - RSA 281-A:2, XI..... 15

Massachusetts Statute – M.G.L. 152 §26-A.....15

Katie Painter Deposition (excerpts)..... 16

Compensation Appeals Board – Hearing Transcript (excerpts).....26

Anna Jacques Hospital Occupational Therapy Questionnaire..... 31

Summary of Katie Painter’s Absences.....32

Katie Painter 4/11/2017 Text..... 33

Peter Dodier 3/8/2017 Email.....35

Chart of Cases (Appendix A to Claimant’s Written Closing).....36

E.H. v. Mack Moldings Company, VT Dept of Labor,
Opinion No. 14-09WC (5/13/2009)..... 45

RSA 281-A:2 Definitions. –

Any word or phrase defined in this section shall have the same meaning throughout RSA 281-A, unless the context clearly requires otherwise:

....

XI. "Injury" or "personal injury" as used in and covered by this chapter means accidental injury or death arising out of and in the course of employment, or any occupational disease or resulting death arising out of and in the course of employment, including disability due to radioactive properties or substances or exposure to ionizing radiation. "Injury" or "personal injury" shall not include diseases or death resulting from stress without physical manifestation, except that, if an employee meets the definition of an "emergency response/public safety worker" under RSA 281-A:2, V-c, the terms "injury" or "personal injury" shall also include acute stress disorder and post-traumatic stress disorder. "Injury" or "personal injury" shall not include a mental injury if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or any similar action, taken in good faith by an employer. No compensation shall be allowed to an employee for injury proximately caused by the employee's willful intention to injure himself or injure another. Conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall be compensable only if contributed to or aggravated or accelerated by the injury. Notwithstanding any law to the contrary, "injury" or "personal injury" shall not mean accidental injury, disease, or death resulting from participation in athletic/recreational activities, on or off premises, unless the employee reasonably expected, based on the employer's instruction or policy, that such participation was a condition of employment or was required for promotion, increased compensation, or continued employment.

XII.

M.G.L. 152 §26-A: Suicide

Section 26A. Dependents shall not be precluded from recovery under this chapter, nor shall the insurance company be relieved from making payment to the commonwealth under section sixty-five, for death by suicide of the employee, if it be shown by the weight of the evidence that, due to the injury, the employee was of such unsoundness of mind as to make him irresponsible for his act of suicide.

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR

ESTATE OF PETER DODIER

V.

OL INTERNATIONAL HOLDINGS

DEPOSITION OF KAITLIN H. PAINTER

Deposition taken at the Law Offices of Amy
Connolly, 20 Hampton Road, Suite C, Exeter, New
Hampshire, on Friday, January 25, 2019,
commencing at 9:00 a.m.

Court Reporter:

Pamela A. Nostrand, LCR, No. 82
(RSA 310-A:179)

1 A P P E A R A N C E S :

2

3 LAW OFFICE OF MANNING & ZIMMERMAN, P.L.L.C.
4 Attorneys for Claimant
5 87 Middle Street
6 Manchester, New Hampshire 03101
7 BY: MAUREEN RAICHE MANNING, ESQ.
8 Tel: (603) 624-7200
9 E-mail: Maureen@manningzimmermanlaw.com

10 TROMBLEY & KFOURY
11 Attorneys for Carrier
12 166 South River Road
13 Suite 250
14 Bedford, New Hampshire 03110
15 BY: PAUL R. KFOURY, JR., ESQ.
16 Tel: (603) 935-7592
17 E-mail: Paul.kfoury@trombleykfoury.com

18
19
20
21
22
23 CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

Deposition of K. Painter - 1/25/19

I N D E X

2 WITNESS: Kaitlin H. Painter

3
4 EXAMINATION BY: PageLine

5
6 Ms. Manning 4 6

7 Mr. Kfoury 77 18

8 Ms. Manning 96 1

9
10
11 INDEX TO EXHIBITS*

12 Description Page Line

13 Painter

14
15 Exhibit 1 Job Description, Office 25 1
16 Manager/Regional Manager,
Exeter, NH

17 Exhibit 2 Text messages 57 5

18 Exhibit 3 Text messages 66 12

19
20
21
22
23 * Original exhibits retained by Attorney Manning
CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

Deposition of K. Painter - 1/25/19

1 KAITLIN H. PAINTER,
2 having been duly sworn by Ms. Manning,
3 was deposed and testified as follows:

4 EXAMINATION

5 BY MS. MANNING:

6 Q Can you state your full name, please?

7 A Yeah. Kaitlin Painter.

8 Q Kaitlin, where do you live?

9 A I live in Raymond, New Hampshire.

10 MS. MANNING: Now, we're here today, which
11 is January 25, 2019, and we're at the law
12 office of Amy Connolly in Exeter, New
13 Hampshire. We're here by agreement to take
14 your testimony regarding the workers'
15 compensation matter involving Peter Dodier.

16 The testimony is being taken in lieu of
17 Ms. Painter's appearance at the Department of
18 Labor to testify at the upcoming hearing.
19 Given that, all objections aren't waived as
20 normal in a deposition and, instead, should be
21 stated briefly. Paul and I have agreed that
22 the objections will be stated, a brief response
23 might be made, but that we will then continue

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 operations manager." Does that sound like what
2 would have been Peter's title?

3 **A Yeah.**

4 **Q** At that time back in 2010 when Peter came
5 onboard what was your role?

6 **A I was -- I was moving drayage and ocean so**
7 **I was a logistics coordinator, is what they would**
8 **have called it.**

9 **Q** What does it mean to move drayage and
10 ocean?

11 **A So drayage is container movements from,**
12 **let's say, the port of Boston and you deliver to a**
13 **warehouse in New England, and the ocean would be**
14 **moving the container from the U.S. to another**
15 **country.**

16 **Q** And you were working on both of those?

17 **A Yes.**

18 **Q** Did your job up until the time of Peter's
19 death change, your job title or descriptions or
20 responsibilities?

21 **A Well, I got more responsibilities just as,**
22 **you know, we grew, but my title never changed, no.**

23 **Q** So you stayed a logistics coordinator?

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **A Yes.**

2 **Q** And what additional responsibilities did
3 you take on over time?

4 **A Just more accounts, more movements, just,**
5 **you know, typical stuff as you get bigger.**

6 **Q** Were you aware that when WTG became TTS
7 Worldwide that Peter received the title branch
8 manager?

9 **A No, I didn't know that there was a change**
10 **in his title.**

11 **Q** So as far as you knew, he was still the
12 manager?

13 **A Yeah, he was always my manager, that**
14 **never, to me, changed.**

15 **Q** Were you an hourly or salary employee?

16 **A I was hourly up until the switch and then**
17 **I went to salary.**

18 **Q** When you say "the switch," which one?

19 **A I believe it was when we went to TTS**
20 **because we were still -- Alan made the decision to**
21 **put, you know, everyone on hourly because that's**
22 **how the whole company was run.**

23 **Q** Moved to hourly or salary?

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **A Salary.**

2 **Q** So just because that didn't come out quite
3 the way you intended it, when you went from WTG and
4 there was a purchase by TTS Worldwide, Alan Baer
5 was the president and he made the decision to move
6 you all to salary?

7 **A Yes.**

8 **Q** What did that mean to you when you got
9 shifted to salary?

10 **A Oh, I was happy. I got more money.**

11 **Q** Okay.

12 **A And, you know, taking vacation time and**
13 **stuff didn't make it so my paycheck was less**
14 **because when you're hourly and you get overtime**
15 **pay, if you take a vacation, then you don't get the**
16 **overtime hours so I was happy.**

17 **Q** In 2016, 2017, at the TTS Worldwide,
18 OL USA office, I don't know what to call it, who
19 reported to Peter in that office?

20 **A I did.**

21 **Q** Anybody else?

22 **A No.**

23 **Q** Who did Dave Parker report to?

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **A I'm sorry. I forgot that he was there.**
2 **He reported to Pete.**

3 **Q** When you were with WTG that was a pretty
4 large operation?

5 **A Yes.**

6 **Q** Can you describe that for us?

7 **A Yes, it was a full -- he did everything,**
8 **LTL, highway, intermodal. He had his own trucking**
9 **company, his own moving company, his own**
10 **warehouses. He wanted to be the one-stop of**
11 **freight.**

12 **Q** And you and Peter worked together at WTG?

13 **A Yes.**

14 **Q** And Peter was running the international
15 operations department, essentially?

16 **A Yes.**

17 **Q** And you were an employee in the
18 department?

19 **A Yes.**

20 **Q** How many of you were in that department?

21 **A When it was WTG, it was me, Pete and two**
22 **other people.**

23 **Q** Who were those other two people?

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 (Painter Exhibit 1, Job Description,
2 Office Manager/Regional Manager, Exeter, NH,
3 was marked for identification.)

4 **Q** Would you describe the environment at TTS
5 Worldwide as fast-paced?

6 **A** **Not always.**

7 **Q** Okay. What do you mean by that?

8 **A** **In freight, sometimes it's, you know, a
9 hot shipment and other times it's not. Like,
10 shipments that we were moving sometimes took
11 60 days from point A to point B so it wasn't really
12 fast-paced because there's nothing you can do to
13 move an ocean container faster.**

14 **Q** Okay. I'm going to show you what we've
15 marked as Exhibit 1. This is a job description
16 that's been given to us as Peter's job description.

17 **A** **Okay.**

18 **Q** Do you recognize that document?

19 **A** **No, I've never seen this.**

20 **Q** Do you have a similar job description now,
21 do you know?

22 **A** **No, I don't know. I haven't had a job
23 description thing like this since probably WTG.**

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **Q** On here the first line indicates the
2 nature of this job requires an individual who is
3 detail-oriented, inquisitive, out of the box
4 thinker and can work in a fast-paced environment to
5 meet timely goals. Would you say that that
6 accurately describes the job description of the
7 regional manager for the Exeter office?

8 **A** **I don't know. I don't think I would.
9 We're just a small -- I feel like this is probably
10 a general thing that they give out to their
11 managers. We were always such a small branch that,
12 I mean, we have other branches that have, like, 20,
13 30 people and we were just two people so this, to
14 me, doesn't sound like my day-to-day, no.**

15 **Q** Back in 2016 and 2017, is it your
16 testimony that this did not accurately describe
17 Peter's job?

18 **A** **Yes.**

19 **Q** In March of 2017, was your paycheck still
20 from TTS Worldwide?

21 **A** **Yes, I believe so. To be honest, unless I
22 went and looked, I don't know because we don't get
23 hard copies. I just get direct deposit and my**

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **checks are, like, on Paycom so unless I looked at
2 that, I couldn't tell you.**

3 **Q** Were you part of the discussion about
4 transitioning from WTG to the TTS Worldwide
5 operation?

6 **A** **Well, nobody discussed it when we went
7 from WTG to TTS, just Bill Walsh sold the company
8 and that's what it was.**

9 **Q** So how did that transition work for you in
10 terms of that you were going to stay with the
11 company?

12 **A** **Well, because, you know, they were keeping
13 regular -- TTS got rid of, like, the asset-based
14 stuff, the moving the trucking and the accounting
15 department, but the actual operational part they
16 kept so I was staying at my job because I liked it
17 there.**

18 **Q** Was there any discussion of you staying
19 with WTG?

20 **A** **Well, WTG was no longer, technically, it
21 was all TTS. We were TTS Worldwide and the others
22 were TTS. There was -- the people at TTS tried to
23 get me to work there versus working for the**

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **Worldwide part, but I didn't want that.**

2 **Q** Peter, as you understand it, was offered a
3 job to continue on as the manager for the new TTS?

4 **A** **Yes.**

5 **Q** And at that time it was just the two of
6 you that stayed in that office?

7 **A** **Yes.**

8 MR. KFOURY: You should just clarify TTS
9 Worldwide versus TTS.

10 **Q** I meant just TTS there, right, it was
11 originally TTS?

12 **A** **But we were always TTS Worldwide because
13 TTS Worldwide was a branch of TTS; it was the
14 international part.**

15 **Q** Right from the beginning?

16 **A** **Right from the beginning.**

17 **Q** Okay. So then, I mean, both you and Peter
18 stayed, both you and Peter moved over to TTS
19 Worldwide?

20 **A** **Yes.**

21 **Q** And you were the only two employees there
22 at the time that that shift was made?

23 **A** **Yes. Well, because -- yes, Judy had left**

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **the company around that time.**

2 Q Judy left in 2013. Does that sound right?

3 A **About that. I would say it was about 2013.**

5 Q What was John Huddleston's role in the company when he was working there?

7 A **He was the vice-president of the company.**

8 **I'm sorry. It was a long time ago that he was**

10 Q For which company was he vice-president?

11 A **WTG.**

12 Q And when did he leave?

13 A **It was fairly soon after the merger so if the merger happened in 2013, it was 2013 or early 2014.**

16 Q And was John Huddleston involved in the international shipping at all?

18 A **No.**

19 Q How about Judy Kemp, was she involved in that at all?

21 A **Yes.**

22 Q Did anybody replace Judy when she left?

23 A **No.**

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 Q How about Amanda Paul or Paulie?

2 A **Poulin?**

3 Q Poulin.

4 A **She worked in the rail department. She**

5 **wasn't --**

6 Q She wasn't part of the international?

7 A **No.**

8 Q When did Jim Vines leave?

9 A **I mean, he left probably two years before**

10 **Judy.**

11 Q So before the --

12 A **Oh, yeah, before that was even a thing.**

13 Q Just so the record's clear what we're

14 **talking about --**

15 A **Before we were even --**

16 Q Shifted?

17 A **-- shifted.**

18 Q To TTS Worldwide?

19 A **Yes.**

20 Q Was Jim Vines replaced at all when he

left?

22 A **No. Well, me, technically, I took over**

23 **his accounts.**

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 Q But nobody got added for you?

2 A **No.**

3 Q Back in the fall of 2016, 2017, how many

4 hours a week were you working?

5 A **In between 40 and 43, I'd say.**

6 Q What time would you get there and what

7 time would you leave, typically?

8 A **I would get there in between 7:30 and**

9 **eight and I would typically leave no later than**

11 Q Do you know what hours Peter was working?

12 A **I do not know specifically what hours he**

13 **was working. I do know most of the time when I got**

15 Q And what about when you left, was he still

16 there?

17 A **Sometimes he was, sometimes he was packing**

18 **up and leaving with me. There was nights where I**

19 **know that he worked later just because other people**

21 **had seen him, but those nights were because his**

22 **daughter was playing hockey across the street and**

22 **he was her ride home.**

23 Q And when was that happening, do you know

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 what time period his daughter was playing?

2 A **I don't know.**

3 Q So you can't put that in a particular

4 year?

5 A **I can't.**

6 Q Did you ever need to work on the weekends?

7 A **No.**

8 Q And did Peter work on the weekends, if you

9 know?

10 A **Not that I know of.**

11 Q My understanding was back in 2016, 2017,

12 you had some flexibility in your job with Peter as

13 the branch manager allowing you to come in late as

14 needed and to leave early as needed and that you

15 were dealing with some family matters and other

16 things; is that true?

17 MR. KFOURY: I'm just going to object to

18 foundation.

19 A **I didn't really, like, come in late or**

20 **leave early though and my family issues were at the**

21 **beginning of that year, of 2016, and it didn't**

22 **affect my job. I mean, I didn't even miss a day,**

23 **but, technically, both Peter and I had flexibility**

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 to leave early and come in late as needed because
2 he would leave early as well to go to his kids'
3 games and stuff.

Q Their sporting events?

A Correct.

Q Did you speak with Peter at all about the
7 stress of the work at TTS Worldwide or OL USA?

A He spoke about -- we spoke about work all
9 the time. I wouldn't necessarily say I ever spoke
10 about being stressed about work though.

Q Did Peter speak about being stressed about
12 work?

A No, he didn't ever say, like, the word
14 "stress." I feel like Pete was just the type of
15 person that worried a lot about stuff in general.

Q What do you mean by that?

A I would say that things that he would
18 worry about wouldn't worry me, like, everybody's
19 different, you know, so things that he would be,
20 like, worried about, I'd be like, Pete, we don't
21 need to be worried about that.

Q So we're here to talk about Pete and what
23 things stressed and worried him so can you tell us

1 paying for it.

Q You were giving me a list of things that
3 you indicated Peter talked with you about stressing
4 him out personally.

A Yes.

Q Did you give me a complete list?

A So he was worried about the college and,
8 obviously, with the college he was also worried
9 about the fact that he had another child going into
10 college and he didn't feel as though they were
11 prepared as he would like to be.

Q Anything else?

A I don't think so.

Q Other than the family members that you've
15 told me about, did you and Peter talk about any
16 other of his family members?

A Oh, yes. Yep. We talked about everybody,
18 you know, he talked about his wife, his brothers,
19 his sisters. If they had family parties he would
20 tell me about his nephews and playing with them and
21 stuff. I mean, I felt like we had a pretty open
22 relationship.

Q So you were aware that Peter had two

1 what those were?

A Well, he had a lot of stuff personally,
3 and, you know, that he was worried about around the
4 time that he passed away.

Q And what was that?

A He was very stressed out about his mother
7 and her health and how she wasn't listening to any
8 of the doctors and he was constantly having to be
9 on the phone with her and her doctors. He was
10 worried about Cameron's college, the money that he
11 wanted to have saved, he didn't get around to doing
12 that and he was going through a lawsuit at the
13 time.

Q When you say at the time with the lawsuit,
15 when was that?

A It was in 2016 and I don't know if it was
17 done by 2017.

Q Did he ever tell you that the lawsuit had
19 gotten resolved?

A Yes.

Q So you were aware that that had been
22 resolved?

A Yes, but it still stressed him out, the

1 children?

A Yes.

Q Had you ever met them?

A Yes.

Q Tell me about that.

A I had met them a few times when they came
7 in the office and I also met them because I went to
8 Cameron's high school graduation party. I felt
9 like I knew them just because every day Pete would
10 talk about them.

Q When did you and Joanna first meet and how
12 would you describe your relationship with her?

A I would say that we probably met the same
14 time I met the kids is when they would have come in
15 the office. I believe the first time I met them,
16 they came in the office and they were going to go
17 out to lunch with Pete, and then I had, you know,
18 seen her a few times when she'd come to the office.
19 Usually, it was, like, to just meet with Pete, you
20 know, real quick because she had the day off or
21 something.

Then I met her again at the graduation
22 party for Cameron and then I would say after Pete's
23

1 **death we probably got closer just because, you**
2 **know, I felt like I was a piece that she didn't**
3 **really know, you know what I mean, like, work-wise,**
4 **it was comforting for me to see her and the kids.**

5 **Q** Did Peter talk to you at all about
6 problems in his marriage?

7 **A** **As far as I was concerned, there wasn't**
8 **problems, you know, besides typical husband, wife,**
9 **you know, fights about dishes or, you know what I**
10 **mean, nothing, I would say, as a problem though.**

11 **Q** How about the two children, other than
12 concerned about college, were they causing him any
13 stress?

14 **A** **Typical teen-age stress from his daughter,**
15 **you know, he'd come in, you know, and be like, she**
16 **didn't want to talk to me this morning, but not**
17 **like, they weren't bad kids so it was never like a**
18 **stress because of that.**

19 **Q** And you were aware that Cameron was in
20 college, correct?

21 **A** **Correct. Yep.**

22 **Q** Did Pete tell you how he had done his
23 first semester in school?

1 **A** **No.**

2 **Q** Do you remember that Peter went to a
3 regional manager's meeting in the fall of 2016?

4 **A** **Yes.**

5 **Q** Did you speak with him about that upon his
6 return?

7 **A** **Yes.**

8 **Q** Did Peter discuss with you at all what was
9 expected or discussed in terms of revenue?

10 **A** **I mean, we had talked about the fact that**
11 **they wanted the company to grow in the next year.**

12 **Q** And did you discuss with Peter what was
13 meant by that?

14 **A** **I mean, I knew what it meant, you know, to**
15 **try to increase revenue on current customers and**
16 **save money when you can, and we were hoping that,**
17 **you know, our salesperson was going to bring new**
18 **accounts.**

19 **Q** Was there ever, that you heard of, any
20 quantification of what type of increase in revenue?

21 **A** **No.**

22 **Q** It was not something that was discussed
23 with you?

1 **A** **Yes, he was very proud of him.**

2 **Q** Did he tell you that he had gotten some
3 additional scholarship money as a result of his
4 grades?

5 **A** **No, not that I recall.**

6 **Q** Do you remember whether or not you had to
7 sign a non-compete agreement?

8 **A** **I did not.**

9 **Q** With either company?

10 **A** **With either company, it was only managers.**

11 **Q** Had you ever heard Pete talk about a
12 non-compete agreement?

13 **A** **Yes.**

14 **Q** Tell us about that.

15 **A** **He didn't -- I had heard him and the other**
16 **managers talk about them, definitely with WTG, and**
17 **I remember Pete had one of his friends that was a**
18 **lawyer look it over before he signed it and I**
19 **believe he made some changes before signing it**
20 **because he wasn't fully happy with the way it was**
21 **worded.**

22 **Q** Anything else you remember talking with
23 Peter about that?

1 **A** **No.**

2 **Q** Did Peter talk to you about that meeting
3 in any other way?

4 **A** **Yes. I mean, he told me about, you know,**
5 **all the managers he met and hanging out with them**
6 **and, you know, going through the meetings with, you**
7 **know, the sales and stuff like that, but not in**
8 **complete depth, no.**

9 **Q** I want to focus on the Christmas week of
10 2016. Well, actually before I do that, I want to
11 ask you, in general, did you and Peter have an
12 arrangement on how the week between Christmas and
13 New Year's would be handled in terms of workdays?

14 **A** **I'm sure that we did. I know that in**
15 **December he used to like having his son's birthday**
16 **off which I believe was the 28th of December. That**
17 **was really the only important date.**

18 **Q** And Peter would try to get that day off?

19 **A** **Correct.**

20 **Q** Would you normally each take a day or two
21 off during that week?

22 **A** **Yes.**

23 **Q** So the week of Christmas 2016 (handing,)

1 Christmas was on a Sunday.
 2 **A Okay.**
 3 **Q** And that meant that the holiday would be
 observed on that Monday?
 4 **A Correct.**
 5 **Q** Do you remember what the plan was for who
 6 would have Tuesday off?
 7 **A I do not.**
 8 **Q** Was the original plan that you would work
 9 on Wednesday and Thursday and he would be off those
 10 two days?
 11 **A I'm not 100 percent sure. Like I said, he**
 12 **normally tried to take his son's birthday off and I**
 13 **believe that's the 28th.**
 14 **Q** Were you originally planning on taking
 15 those two days off?
 16 **A I don't know. I can't remember.**
 17 **Q** Do you recall that you actually were out
 18 sick for a couple of those two days?
 19 **A I mean, it's possible. I don't fully**
 20 **remember, but it was around that time that I**
 21 **started to get vertigo so that could have been.**
 22 **Q** Do you recall that Peter worked that full

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 week instead of taking time off other than what was
 2 considered the Christmas Day?
 3 **A I don't recall, but if I was wasn't there,**
 4 **then he would have been working.**
 5 **Q** Because if you didn't work he had to?
 6 **A Well, one of us had to be working, yes.**
 7 **Q** So if the payroll records indicate that
 8 you were out on the 28th and 29th on sick days --
 9 **A Then he would have been working.**
 10 **Q** Do you recall talking with Peter at all
 11 about him feeling stressed that he had to work that
 12 week?
 13 **A No.**
 14 **Q** So he didn't raise that with you?
 15 **A No.**
 16 **Q** Back in 2016, 2017, did you have an office
 17 cell phone?
 18 **A No.**
 19 **Q** Did Peter?
 20 **A No. I believe he had gotten -- I believe**
 21 **he only had one cell phone.**
 22 **Q** So you weren't aware that he had an office
 23 phone?

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **A No, I don't recall him having two phones.**
 2 **Q** Can you tell me about the Oasis computer
 3 system?
 4 **A The only thing I know about it, it was**
 5 **created to move our customers that we only do the**
 6 **freight forwarding for.**
 7 **Q** Is that something that you had to work
 8 with?
 9 **A No.**
 10 **Q** Even now?
 11 **A Correct.**
 12 **Q** Is that something that Peter would have
 13 had to work with?
 14 **A Yeah. I mean, we both would have had to**
 15 **work with it because one of Pete's accounts was a**
 16 **freight forwarding account.**
 17 **Q** So you would have had to learn it also --
 18 **A Correct.**
 19 **Q** -- if you were covering him?
 20 **A Correct.**
 21 **Q** There's some indication that something was
 22 happening regarding that on or about Monday,
 23 March 13, 2017. Are you aware of that at all?

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 MR. KFOURY: Objection to foundation.
 2 **A I am not fully aware of the timeline of**
 3 **it; I know that the Friday before that we had a**
 4 **training session.**
 5 **Q** So that would have been March 10?
 6 **A Correct.**
 7 **Q** Who did the training session?
 8 **A Pete and I and Matt Flesock, and I can't**
 9 **spell that last name so --**
 10 **Q** He's back at the home office?
 11 **A Yes.**
 12 **Q** What was the purpose of the training
 13 session?
 14 **A It was to go over how to use the system.**
 15 **Q** What was different about this system than
 16 what you were doing?
 17 **A Instead of doing things in multiple**
 18 **systems, this made it so you only did it in one**
 19 **system.**
 20 **Q** And the account that Pete had that
 21 required this system was going to be transitioned
 22 to the Oasis?
 23 **A That was the plan, I believe, yes.**

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **Q** Which is why you had the training on
2 March 10?

3 **A** Yes.

Q The training session that you had, how
5 long was that?

6 **A** I don't remember, but, I mean, I would say
7 it's usually, in my -- you know, about an
8 hour-and-a-half, two hours.

9 **Q** Would Dave have been involved in the Oasis
10 system at all?

11 **A** No.

12 **Q** Back in 2016, 2017, can you describe what
13 the vacation policy was at the company?

14 **A** Not really because we -- I'm sure the
15 policy is you're supposed to give us a certain
16 amount of time before you request it, but that's
17 not how we would do it. We would, you know, plan
18 it and then talk about it and then put it in.
19 Sometimes it was, you know, not as much notice as,
20 I believe, 30 days so it would probably be like two
21 weeks or something.

22 **Q** So that was flexible between you and Peter
23 regarding vacation?

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **A** Yeah.

2 **Q** And you would just, more or less, let the
3 home office know what you were planning to do?

4 **A** Yeah, because we would have to put it into
5 Paycom. I believe we were using Paycom and you
6 request it, and for me, Pete approved mine and I
7 believe New York probably approved his. I'm not
8 100 percent sure because I wouldn't know because I
9 wasn't doing it.

10 **Q** When did the Paycom system go into effect?

11 **A** I believe we started doing Paycom when TTS
12 bought WTG.

13 **Q** Were you able to take all of your vacation
14 days in 2016?

15 **A** I don't think I did.

16 **Q** Why not?

17 **A** I, honestly, just because I didn't have
18 vacation planned and I would only take days here
19 and there. That's just how I like to take my
20 vacation time so I would have carried over probably
a week.

22 **Q** The company allowed you to carry over the
23 time?

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **A** Yes, I believe they allow you to carry
2 over up to 40 hours.

3 **Q** Did you feel comfortable taking more than
4 a couple of days off in a row?

5 **A** Yes, but I didn't because I like to take
6 just, you know, long weekends. That's how I like
7 to take my vacation.

8 **Q** Did you and Pete talk about not being able
9 to take more than a couple of days off in a row
10 because of the workload?

11 **A** We would talk about it, but, I mean, I
12 would always tell Pete he can do what he wants to
13 do, you know, I'll cover it just like he would
14 cover it for me if I wanted it, but like I said, I
15 personally just like long weekends. I don't need
16 to take a week off.

17 **Q** When you were on a vacation day were you
18 able to what you might call unplug and not have to
19 deal with it?

20 **A** I could, but I don't. That's my personal
21 choice though.

22 **Q** How about Peter, when he was on a vacation
23 day, did he unplug?

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **A** No.

2 MR. KFOURY: Objection.

3 **A** But it was his personal choice to call in
4 and stuff like that.

5 **Q** So your testimony today is that it wasn't
6 the nature of the job, the stress of the job that
7 had Peter involved even on vacation days?

8 **A** Yes, that's my testimony, it's his
9 personal choice.

10 **Q** But he did do it, correct, even when he
11 was on a vacation day, he was still checking in
12 with the office?

13 **A** I can't say every vacation, but, yes,
14 sometimes.

15 **Q** That was his habit?

16 **A** Yes.

17 **Q** Do you know when Dave Parker was hired?

18 **A** I believe it was the beginning of 2016.

19 **Q** And who made the decision to hire him?

20 **A** Well, Pete was the final decision, but, I
21 mean, he spoke to me and I believe him and Alan
22 also interviewed him.

23 **Q** Did Peter know him before he was to start

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 working there?

2 **A Yes.**

3 **Q** Do you know how?

4 **A Yes, because Dave was a salesperson at a**
5 **steamship line, NYK, so Pete had probably crossed**
6 **paths with him at functions.**

7 **Q** What was Dave Parker's role to be?

8 **A Sales.**

9 **Q** Were you or Pete doing sales in addition
10 to the job?

11 **A A little bit. There were certain accounts**
12 **and there's still certain accounts that I do sales**
13 **calls on because they're my customers, but we**
14 **weren't going out and getting new business, no.**

15 **Q** Whose job was it before Dave Parker to get
16 new business?

17 **A We didn't really have a set person for**
18 **that, that's why Dave was hired.**

19 **Q** Were you aware that Dave Parker suffered
20 some health challenges shortly after he was hired?

21 **A Yes.**

22 **Q** What do you know about that?

23 **A I know that he broke his arm and when they**

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **were in repairing that they saw something that**
2 **looked cancerous so they biopsied it and it was**
3 **cancer.**

4 **Q** So he was out of work for quite some time
5 that year?

6 **A I believe he was out more so between April**
7 **and September was when he was going through his**
8 **chemo.**

9 **Q** When he came back in September did he come
10 back full-time or part-time?

11 **A He came back -- he would do a couple days**
12 **in the office, a couple days at home until he**
13 **started to get, you know, his strength back.**

14 **Q** Were you aware in February of 2007 that
15 Peter was to give Dave Parker, essentially, a
16 letter of warning regarding his job performance?

17 **A 2017, you mean?**

18 **Q** 2017.

19 **A I was not aware of that. I wasn't aware**
20 **of a letter. I was aware of Dave being on a**
21 **probation.**

22 **Q** How did you become aware of that?

23 **A Just from Pete telling me that that was**

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **their decision.**

2 **Q** That Dave would go on probation?

3 **A Yeah. I believe it was, honestly, his**
4 **second probation or third.**

5 **Q** Could you tell that the situation
6 regarding Dave Parker's employment there and his
7 situation was causing Peter stress?

8 **A A little bit.**

9 **Q** Tell me about that.

10 **A Well, you know, when he was hired he was**
11 **hired for sales and then he got sick and, you know,**
12 **Pete and I both know that he wasn't going to**
13 **produce sales-wise, you know, but he was going**
14 **through cancer so that was another stress and then**
15 **it was when he comes back is he going to produce.**
16 **He just didn't try and Pete kept trying to help**
17 **him, like, you know, motivate him to do sales and**
18 **he just wasn't so it was a stressful situation.**

19 **Q** So in February and March of 2017, were you
20 aware that there were discussions that the end was
21 near?

22 **A No.**

23 **Q** You weren't part of that?

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 **A I didn't know how long -- no, I didn't**
2 **know how long his probation was going to be,**
3 **etcetera.**

4 **Q** Before Peter's death, did you have any
5 discussions with Dave Parker about his employment?

6 **A No.**

7 **Q** So Dave didn't confide in you what was
8 happening to him, employment-wise?

9 **A No.**

10 **Q** Was that something you and Dave weren't
11 close in confiding in each like Peter and you had
12 been?

13 **A No, I didn't really know Dave all that**
14 **well. I mean, he worked for us a short time and**
15 **then got sick so, I mean, he didn't spend very much**
16 **time in the office.**

17 **Q** Were you aware that Peter had sought
18 medical help for stress?

19 **A No.**

20 **Q** Were you aware that Peter was on any sort
21 of anti-anxiety medication?

22 **A No. I was under the impression that he**
23 **had a stomach issue, that's what I was told from**

CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 Q From what you had seen there was a change
2 in him?

3 A Yes, but he wouldn't tell me that. I
4 tried getting him to talk to me, but he didn't tell
5 me anything about his mental health.

6 Q Other than his mother calling him during
7 this January and February time period, were there
8 specific things that you recall, personal things?

9 A Nothing specifically. I mean, it was a
10 lot of stuff. I mean, it was mostly based around
11 his mother because, you know, he lived next door to
12 her so he was the one that had to, you know, make
13 sure that she got to her appointments and, you
14 know, her driveway was cleaned off and she was
15 eating properly and he felt like his siblings
16 weren't helping like they should.

17 Q He had siblings that all lived nearby as
18 well, right?

19 A Not all them. I believe one of them lives
20 in New Jersey, but he did have a sister and a
21 brother that lived nearby, but he lived right next
22 door to his mother.

23 Q Going back to the text message, it says, I
CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 spoke about no vacations, how we always had to plan
2 and make sure we had our phones the entire time.

3 A Yes, but that, again, we made sure we had
4 our phones the entire time because that's how Pete
5 and I worked together. Like, I still do that now,
6 that's how I am.

7 Q I'm not asking you whether it was a
8 requirement of the job. I'm asking you whether you
9 did it.

10 A Yes, and I still do it.

11 Q For what reason?

12 A It's just how I work.

13 Q But what do you think might happen that
14 you need your phone with you?

15 A I just like to make sure personally that
16 my customers are happy, that's why I would do it.

17 Q So what would you do with your phone?

18 A E-mail.

19 Q Would you make calls or take calls on
20 them?

21 A If I had to make a call, I would, but, I
22 mean, we rarely get phone calls in general. I
23 could go a week without my phone ringing, it's

1 mostly e-mail based.

2 Q It's e-mails, the contact is e-mails?

3 A Yeah, because, you know, if you're working
4 with overseas people it's not the same time zone so
5 they're not going to call you, you know.

6 Q I looked up on-line and I think there are
7 more than 24 time zones in the world.

8 A It's crazy, yep, and I can pretty much
9 tell you that China's 12 hours difference, but
10 other than that, I always have to Google it.

11 Q You wrote here, I spoke about the no
12 vacations.

13 A Yep. For Pete, he felt, you know, Pete
14 had always said that, you know, you're supposed to
15 take two weeks off in a row and he said he was
16 never able to do that, but that's what he had heard
17 you're supposed to do. I guess he probably wanted
18 to, but he didn't.

19 Q Because he felt he couldn't?

20 A I don't know if he felt like he couldn't
21 or maybe he didn't want to. You know, I almost
22 felt like he didn't want to burden me maybe.

23 Q So for the whole time the two of you
CONNELLY REPORTING & VIDEO SERVICES, INC. (603) 472-5745

1 worked together, did he take more than a couple of
2 days in a row off?

3 A To be honest with you, I don't know. I
4 mean, he might have when, you know, he first
5 started, but that was so long ago, I can't recall.

6 Q Can you remember a time when he took a
7 whole week off?

8 A I don't know.

9 Q But you can't remember a specific time
10 that he did?

11 A No, I can't. I don't know if he did maybe
12 one summer when they went on their camping trips or
13 not. I don't know.

14 Q And then you wrote how support is
15 absolutely needed.

16 A Yep, that's not how I felt, that's how
17 Pete would feel, like, I was talking to Alan about
18 Pete.

19 Q And do you understand that we're here
20 today to ask you questions about what you know
21 about how Peter was feeling, not how you would
22 feel?

23 A Yes.

1

1
2 STATE OF NEW HAMPSHIRE
3 DEPARTMENT OF LABOR
4 COMPENSATION APPEALS BOARD
5
6
7 Case No. 85199
8 *****
9 ESTATE OF PETER DODIER
10 vs.
11 OL INTERNATIONAL HOLDINGS, LLC
12 *****
13
14
15 PROCEEDING: Compensation Appeals Board hearing
16 (Transcribed from audio recording)
17 LOCATION: 95 Pleasant Street
18 Concord, NH
19 INJURY DATE: February 18, 2017
20 March 12, 2017
21 HEARING DATE: November 7, 2019
22
23

2

1 APPEARANCES
2
3 Compensation Appeals Board:
4 Edward Patch, Esq., Chair
5 Susan Jeffery
6 Leo Kelly
7
8 For the Claimant:
9
10 LAW OFFICE OF MANNING & ZIMMERMAN, PLLC
11 By: Maureen Raiche Manning, Esq.
12 87 Middle Street
13 Manchester, NH 03101
14 (603) 624-7200
15 maureen@mzlawnh.com
16 janna@mzlawnh.com
17
18 For the Employer:
19 TROMBLEY & KFOURY, P.A.
20 By: Paul R. Kfoury Jr., Esq.
21 166 South River Road, Suite 250
22 Bedford, NH 03110
23 (603) 935-7566
24
25 Transcribed by:
26
27 Celeste A. Quimby
28 Licensed Court Reporter
29 NH LCR No. 17
30
31
32
33

3

I N D E X

1
2
3
4 Opening statement by Ms. Manning, page 14
5
6 WITNESS: Direct Cross Redirect Recross
7
8 JOANNA DODIER
9 By Ms. Manning 16 146
10 By Mr. Kfoury 88
11
12 MATTHEW CHRISOM
13 By Ms. Manning 153
14 By Mr. Kfoury 172
15
16 DAVID PARKER
17 By Ms. Manning 177 220
18 By Mr. Kfoury 207
19
20 GEORGE DODIER
21 By Ms. Manning 221
22 By Mr. Kfoury 234
23
24 ALAN BAER
25 By Mr. Kfoury 236
26 By Ms. Manning 270
27
28
29
30

4

1 CHAIRMAN PATCH: Good morning. Today is
2 November 7th, 2019. We're here at the New
3 Hampshire Department of Labor for a Compensation
4 Appeals Board hearing.
5 The caption on -- it's about 9:20 in the
6 morning. Caption on this case is Estate of Peter
7 Dodier, represented by Attorney Maureen Raiche
8 Manning. Is there another name in there? That's
9 it, right?
10 MS. MANNING: That's correct.
11 CHAIRMAN PATCH: Sorry about that.
12 Employer, OL International Holdings, LLC, insured
13 by Utica Mutual Insurance Company, and represented
14 by Attorney Paul Kfoury Junior.
15 We're here on an appeal de novo of a
16 Labor Department decision dated August 30th, 2018.
17 What's up with the two dates of injury?
18 We have a date of injury February 18, 2017, and a
19 date of injury listed March 12, 2017. Are there
20 indeed two dates of injury?
21 MS. MANNING: Yes, that because Paul
22 and I don't agree on what the actual date is.
23 February 18th is the day of first medical

145

1 wood pellets?
 2 A. Yes.
 3 Q. Whatever those pellets are for pellet
 4 stoves. And then he came back home?
 5 A. Yes.
 6 Q. Okay. And then, he then is going to go
 7 out to get gas for, I guess, the storm and pick up
 8 flour at your mom's?
 9 A. No, drop off flour.
 10 Q. Drop off, okay. And so then he leaves a
 11 second time, right?
 12 A. Yes.
 13 Q. And you're home both of those times?
 14 A. Yes.
 15 Q. Okay. And then he leaves a second time,
 16 and he does go drop off the flour?
 17 A. Yes.
 18 Q. Okay.
 19 MR. KFOURY: Can I just have a minute,
 20 please?
 21 CHAIRMAN PATCH: Yeah.
 22 MR. KFOURY: I don't have anything else.
 23 Thank you.

146

1 CHAIRMAN PATCH: Redirect based solely on
 2 the cross?
 3 REDIRECT EXAMINATION
 4 BY MS. MANNING:
 5 Q. On page 123 under Tab 14, the statement
 6 about Peter having to give a presentation for
 7 Oasis, what was that based on?
 8 A. Just our conversations and the way I
 9 understood when he was telling me.
 10 Q. When was it that Peter was most stressed
 11 out about the Oasis system?
 12 A. The Friday night before his death, he was
 13 on the computer for hours. I went to bed well
 14 before him, and he was fixated on this Oasis
 15 program. So it would have been ten.
 16 Q. Did you have an understanding of whether
 17 that Christmas week Peter was taking two days off,
 18 and what was Katie's plan before she got sick?
 19 A. I believe she had also planned to take
 20 some time. They usually worked it out between the
 21 two of them so they weren't both out. But I don't
 22 know exactly what her plan was.
 23 Q. Under Tab 17, we've looked at these text

147

1 messages between you and Katie.
 2 A. Um-hum, yes.
 3 Q. Am I right, Katie's a part of these
 4 messages?
 5 A. Yes.
 6 Q. You're texting with Katie, and Katie is
 7 texting you?
 8 A. Yes.
 9 Q. So she would have had these messages on
 10 her own phone?
 11 A. Yes.
 12 Q. Did you ever tell Katie anything she
 13 didn't already know about the job at TTS
 14 Worldwide/OL USA?
 15 A. No.
 16 Q. Katie had been working there five years
 17 before Pete even got there? Are you aware of
 18 that?
 19 A. Yes.
 20 Q. The March 8th email under -- at page 302.
 21 I'll give you the tab. Tab 30. This is the email
 22 where Peter's asking for help. Did you help him
 23 write this?

148

1 A. We were -- we were in the living room
 2 together, and he was kind of reading it to me, and
 3 I was just listening as he was talking it out.
 4 Q. So you were aware that he wrote it?
 5 A. Yes, and this was the second time he was
 6 asking for additional support.
 7 Q. When was the first time, as you
 8 understood it?
 9 A. I believe it's when Carrie Murphy was in
 10 the Exeter area, but I don't know when that was,
 11 but she had spent some time at the office, and I
 12 believe he asked her verbally.
 13 Q. What was Peter's state of mind while he
 14 was composing this email?
 15 A. He was feeling -- feeling overwhelmed,
 16 really hoping this was -- they were going to
 17 provide some help. I hate to use the word
 18 "desperate," but kind of looking to -- something
 19 that would make the job more tolerable. Or
 20 "manageable" I guess is a better word, in his
 21 mind.
 22 Q. You were asked about the financial
 23 summary that we put together, and I just want to

153

1 CHAIRMAN PATCH: Deal.

2 MS. MANNING: I think we'd be done around

3 five, yeah.

4 MR. KELLY: Whatever.

5 MS. JEFFERY: Yeah. If we're going to go

6 that long, then let's take 45.

7 CHAIRMAN PATCH: All right. We're going

8 to take a break. It's 12:15. We will resume at

9 1:00. Thank you.

10 * * *

11 CHAIRMAN PATCH: Okay. We're back on the

12 record on the Dodier appeal after a quick lunch

13 break, and we'll continue with the testimony.

14 Attorney Raiche Manning, would you kindly

15 call your next witness.

16 MS. MANNING: Yes, the next witness that

17 we'd call is Matthew Chrisom. Would you raise

18 your right hand.

19 MATTHEW CHRISOM

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. MANNING:

23 Q. Can you state and spell your name for the

154

1 record?

2 A. Matthew Chrisom, M-a-t-t-h-e-w,

3 C-h-r-i-s-o-m.

4 Q. All right. Matthew, can you tell us

5 about yourself?

6 A. My name is Matthew Chrisom, 51 years old.

7 I live in East Walpole, Massachusetts. I'm the

8 international ocean freight manager for XPO

9 Logistics Global Forwarding. I've been in the

10 transportation business for 30 years. I'm married

11 to my wife for 16 years, Kimberly. I have a

12 14-year-old daughter that just started high school

13 and an 11-year-old son that just started middle

14 school.

15 Q. And how do you know Peter?

16 A. Peter hired me into the first job that I

17 had into this business back in October of 1989.

18 Q. And how long did you and Peter work

19 together?

20 A. Peter and I worked together for about 20

21 years plus, between two different companies.

22 Q. And when you were working together, were

23 you working closely together?

155

1 A. Very closely, side by side.

2 Q. How would you describe Peter as a

3 coworker, or as a manager, because I think at some

4 time he --

5 A. Peter was my manager --

6 Q. Okay.

7 A. -- at both positions. I became his

8 right-hand guy. Peter was -- if I've had any

9 success or become a professional, it had to do

10 with working for Peter, because he was the model

11 of a businessperson and a manager.

12 Q. How would you describe Peter as a person?

13 A. Peter was one of the greatest people

14 you'd ever meet, just somebody to look up to,

15 somebody to say I want to be like Pete.

16 Q. And how would you describe his work

17 ethic?

18 A. Pete was -- the best way to describe it

19 is Pete cared about what he did, wanted -- he

20 wanted to be excellent at what he did and a true

21 leader. He led by example. Peter was the type of

22 person that was the first person in the office and

23 the last person to leave.

156

1 Q. Now, under Tab 40, pages 369 and 370, let

2 me draw your attention to that document that the

3 panel has as well.

4 CHAIRMAN PATCH: Non-meds? Non-medical?

5 MS. MANNING: Non-medical, yes. Tab 40,

6 369.

7 Q. BY MS. MANNING: Who wrote this document?

8 A. I did.

9 Q. And is that true and accurate to the best

10 of your ability?

11 A. Yes.

12 Q. Have you had a chance to review that?

13 A. I have.

14 Q. And does anything need to be corrected?

15 A. No.

16 Q. So I think, other than Mr. Baer, you're

17 the only one in the room that's worked in domestic

18 or international transportation, so I want to ask

19 you a little bit about the business.

20 A. Certainly.

21 Q. And we've got your affidavit here as

22 well. But can you tell us about the business that

23 you and Peter were in for those 20 years and what

189

1 death, because I know you stayed a couple of
2 months more than that, but --
3 A. I did.
4 Q. -- I'm focused on before Peter's death.
5 How did your sales effort for the company go?
6 A. Well, we had some success on individual
7 quotes. The problem was -- is that we wanted to
8 focus on some of the larger accounts that had
9 multiple container shipments or multiple air
10 freight shipments, and we would put in bids.
11 Unfortunately, those bids were not accepted and
12 the freight went to somebody else.
13 But constantly we were working on getting
14 some larger accounts. And even during that time,
15 there were a couple of accounts that Peter had had
16 already established that we lost to competitors.
17 But it was an ongoing effort to try to bring in
18 new business. Unfortunately, it wasn't always
19 successful and it was -- again, the market share
20 for the company was not recognized in the
21 community, that we were an unknown commodity, the
22 well was, and so we had to get the name out there.
23 And then it was a matter of getting

190

1 support from not only the shippers, the beneficial
2 cargo owners, but also from the freight forwarders
3 who would co-load with us and use our services,
4 and it was an uphill battle to try to get them to
5 recognize us, just to pick up the phone and call.
6 So I was dedicating my efforts out there to get
7 the name out there and then to get them to pick up
8 the phone and contact us, and some did, but not
9 the majority.
10 Q. So it's been disclosed through you --
11 your prior employer and Peter's employer that you
12 maybe had one sale during the time?
13 A. No, that's not true. I had more than one
14 sale. We had -- we had quotes going out all the
15 time, and we had several accounts that were -- did
16 act on that, and we did have individual shipments
17 that we handled, whether they be ocean freight or
18 air freight, and -- but it wasn't just one sale.
19 Q. When did you stop working for TTS/OL; do
20 you remember when?
21 A. It was in the spring of -- couple years
22 ago. '18. I don't know. I don't recall exactly
23 when the date was, but...

191

1 Q. Was it the same year that Peter died?
2 A. Yes. Yeah.
3 Q. Okay.
4 A. But later in the year.
5 Q. Were you aware that Peter had gone to a
6 regional managers meeting in New York in October
7 of 2016?
8 A. Yes.
9 Q. And what did you learn about that
10 meeting?
11 A. That -- I don't know. I don't recall
12 exactly any kind of information from that meeting
13 per se. What I did notice is that we would have
14 monthly conference calls among the different
15 offices, and Peter was always nervous about those
16 conference calls, because they basically had to
17 report what activities were going on for that
18 month and any new business and things, and he was
19 always nervous about the conference call.
20 Q. Who was the conference call with?
21 A. Well, it was with all the different
22 offices, and it would be led by Carrie Murphy, who
23 was the vice president of sales for the company.

192

1 She was based in the Chicago office. And Peter --
2 she would come and visit us on occasion. I made
3 calls with her, Peter made calls with her, but she
4 always was very unnerving to Peter because of --
5 wasn't exactly sure. He was always nervous around
6 her, and I think it was because she demanded a
7 lot.
8 Q. In the December 2016, January and
9 February 2017 time frame, did you make
10 observations about Peter at work in terms of his
11 workload and how he was handling the job?
12 A. Yeah. Well, I sat directly across from
13 Peter's desk, so I would look at Peter on the
14 other side of the room and, yeah, I could observe
15 that he -- he was under stress. He was reflecting
16 that in his behavior and he didn't feel
17 comfortable.
18 They converted to a new computer system,
19 Oasis, and -- for the reporting, and Peter was
20 having difficulty with that because it wasn't as
21 easy as the old system, and he was having
22 difficulty mastering it, and it was taking too
23 long to enter the information that he needed to

<p style="text-align: right;">197</p> <p>1 A. Well, I worked for two different 2 steamship lines, one for ten years and one for 20 3 years, so 30 years in the steamship line. And 4 then I worked for some NVOs, freight forwarders, 5 after that, before I worked at TTS/OL. 6 Q. So do you have an idea of the total 7 number of years of experience you have? 8 A. I would say 35. 9 Q. So during that 35-year period, can you 10 describe -- for those of us that don't work in the 11 field, how would you describe this type of job, 12 this type of company, the type of job? 13 A. Well, it's outside sales. You know, 14 you're traveling around visiting accounts. On the 15 steamship side, it was you're selling contracts. 16 Because you'd go to these companies, the importers 17 and exporters, and you would -- you would sell 18 them space on the ship at a set price, typically 19 for a year, and so they could figure that cost 20 into their transportation costs. On the NVO side, 21 it was for oftentimes less than container load 22 shipments or smaller shipments than -- you know, 23 it would be a pallet here or six pallets there,</p>	<p style="text-align: right;">199</p> <p>1 gave it his all to try to hang onto it, and it 2 ended up he got undercut by Kuehne and Nagel, I 3 believe it was. It was a foreign freight 4 forwarder that undercut our pricing. 5 Q. During the time that you and Peter worked 6 together, did you observe things going on in 7 Peter's personal life? 8 A. Yes. Yes. 9 Q. It's a small office, so you would -- 10 A. Yeah. 11 Q. -- talk about things? 12 A. Yeah, you'd see. Well, I mean it was -- 13 we didn't have private cubicles, so somebody could 14 be on the phone and you could overhear their 15 conversation, you know. 16 Peter was very concerned with his 17 mother's ongoing or, I guess, developing dementia. 18 She would call up and she was concerned about a 19 doctor's appointment or this and that, and Peter 20 would have to reassure her that he had taken care 21 of it, it was going to be all right, she didn't 22 need to get in the car and drive here or there, 23 which she would want to do, and he'd have to try</p>
<p style="text-align: right;">198</p> <p>1 not a full container load. 2 Q. Would you say that this line of work is 3 stressful work or not? 4 A. It's stressful, yeah. Yeah. Yup. 5 Q. Are you aware of the work hours that 6 Peter kept? 7 A. Yeah, he worked long hours. We all did. 8 Peter did -- he would oftentimes be the first 9 person -- always the first person in the office 10 and the last person to leave. 11 Q. So he -- Peter didn't treat this as a 12 nine-to-five and out-the-door kind of job? 13 A. No, not at all, no, never. No. 14 Q. You mentioned a couple times that Peter 15 had lost some accounts. Do you remember the names 16 of any of those accounts? 17 A. Remstar, Chemtan were two that come to 18 mind off the top of my head, but -- you know. And 19 he was very concerned about Remstar, and even he'd 20 had Alan involved in trying to keep that account. 21 Q. From what you saw, how did Peter deal 22 with the loss of the Remstar account? 23 A. He was upset. You know, he put his --</p>	<p style="text-align: right;">200</p> <p>1 to stop her, you know, to say, jeez, you know, you 2 don't need to be involved in that. I've already 3 taken care of it. 4 Yeah. So... 5 Q. Did you notice a difference in Peter's 6 ability to handle the phone calls from his mother 7 over the time that you worked there? 8 A. Yeah. I mean he was getting -- he was 9 getting more concerned. I noticed that little 10 things started to bother him that didn't in the 11 past, and I think it was he was becoming more 12 emotional, and -- and these phone calls from his 13 mother or, you know, problems from -- from Carrie 14 and calling and questioning him on things like 15 that would kind of -- he would acknowledge that he 16 was upset. 17 Q. Were there other things in Peter's 18 personal life, like the college financial issue? 19 A. Well, yeah, he had voiced a concern that, 20 you know, when Cam went to -- to -- was going to 21 school and -- or applied to school, to college, 22 and the financial aid package had come through, 23 and Peter was -- thought things were all set, and</p>



Adult Psychiatric Services
Occupational Therapy Questionnaire

M0173390 U052578077
05/12/1961 55 M
DODIER, PETER
0211-A 02/23/2017
LIPIN, ALEXANDER MD

Who else lives with you? WIFE, DAUGHTER, SON
 Who does the cooking? WIFE & I
 Who does the grocery shopping? yes
 Who does the housecleaning? yes
 Do you manage your own finances? Yes No If "No" who does? _____
 Do you manage your own medications? Yes No If "No" who does? _____
 What do you use for transportation? Drive own car Valid Driver's License Bus
 Bike Walk Family/Friends
 What do you do with your time? Work Volunteer School Support Groups (AA, NA, etc)
 Social Club (Clubhouse) Other: COACH TEAMS

Are you working now? No Yes; How many hours/week do you work? 60 What shift do you work? AM PM Night
 Will you be returning to work? Yes No
 What type of work/job do you do? TRANSPORTATION
 What other type(s) of work/job(s) have you done? _____
 What was your highest level of education? BIA College
 What is your preferred learning style: Visual Demonstration Verbal/Discussion
 Written Materials Hands On

What activities do you enjoy doing?

<input type="checkbox"/> Arts/Crafts	<input checked="" type="checkbox"/> Exercise	<input checked="" type="checkbox"/> Reading
<input checked="" type="checkbox"/> Cards	<input type="checkbox"/> Games	<input type="checkbox"/> Religious Involvement
<input type="checkbox"/> Clubs/Support Groups	<input type="checkbox"/> Gardening	<input checked="" type="checkbox"/> Taking Care of Pets
<input checked="" type="checkbox"/> Computers	<input type="checkbox"/> Music	<input checked="" type="checkbox"/> TV/Movies
<input type="checkbox"/> Cooking	<input type="checkbox"/> Playing an Instrument	<input type="checkbox"/> Walking/Hiking
	Kind _____	

Other: _____

Are you bothered by:

<input type="checkbox"/> Hypersensitive to touch/tags on clothing	<input type="checkbox"/> Heights/Movements/Lack of Movement	<input type="checkbox"/> Not having control or choices
<input type="checkbox"/> Bright lights/Darkness/Clutter	<input type="checkbox"/> Loud Noise/Someone Yelling/Repetitive Noise	<input type="checkbox"/> Bedroom door being kept open/Isolation
<input type="checkbox"/> Certain Fabrics/Textures/Foods	<input type="checkbox"/> Certain time of day	<input type="checkbox"/> Is there something in particular that makes you feel threatened?
<input type="checkbox"/> Smells/Perfumes		
<input type="checkbox"/> Increased environmental stimuli		

Other: _____

Would you describe your current state as being over or under alert? Alert Hyper or Withdrawn? NERVOUS
 Would you describe yourself as: Sensory Deprived Sensory Defensive Self-injurious
 Sensory Seeking Sensory Avoidant A High Risk Taker None of the Above
 Do you have any seasonal or annual symptoms or patterns? N/A

Patient Signature: [Signature] Date/Time: 2/24/17

Successful Completion Attempt 1	Attempt 2	Attempt 3
Date: _____ Time: _____	Date: _____ Time: _____	Date: _____ Time: _____
Reason: _____	Reason: _____	Reason: _____
Signed: _____	Signed: _____	Signed: _____

January 2017

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1 8:32pm Katie is sick and just left urgent care.	2 6:50am Katie is sick and leaves work early.	3 7:17am Katie is sick and tells Peter she may be late. At 9:29am, says she will not be coming in.	4 Katie out sick. Peter in office.	5	6
	8	9	10	11	12	13
15	16	17	18 6:59am Peter already at work. Tells re: road condition.	19	20	21
22	23 6:50am Katie is out due to road condition. She asks Peter to log in to her computer.	24	25 6:06pm Peter asks Katie if she has "thought about another person."	26	27	28
29	30	31				

print-a-calendar.com

February 2017

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
	5	6 6:57am Katie and Dove out sick. Katie still taking phone calls.	7 6:29am Katie asks Peter about bad roads. At 6:49am, Peter says "they were 'slippy' but he went slow."	8	9	10
12	13 6:50am Katie is sick and works from home.	14 6:03pm Peter calls Katie re: 65I and asks if he needs to go to office. Peter talks call for Katie. Last text at 7pm.	15	16 6:14am Katie is working from home due to bad tires.	17	18
19	20	21	22 9:25pm Peter tells Katie he has a stomach bug.	23 2:19pm Peter tells Katie he is at the doctor. At 11:05pm, Joanna tells Katie that Peter will be out tomorrow. pg.51	24 12:02pm Peter is out but asks Joanna to text Katie re: a few accounts. Katie is "confused with what needs to happen." pg.52	25
26	27 Peter and Katie are both out. Peter had asked Katie to come in, but she did not. pg.52	28				

print-a-calendar.com

It was also at this time that Peter began to worry about implementing new OL USA technology and software, including the new OASYS system. Again, everything was changing and becoming more demanding.

It was at this time that the pressure of the heightened revenue projections for 2017 and David's status began to wear on Peter. Despite the good year TTS Worldwide had in 2016 - either \$295,000 or \$327,000 in net revenue - the 2017 budget called for revenue of \$360,000

New iMessage

Cancel

To: Katie Painter

It went a lot like I expected it was emotional. I let him know my feelings about everything. From how pete was and why he was. N that i felt as though the stress from the job was his downfall. I spoke about the no vacations, how we always had to plan and make sure we had our phones the entire time. How support is abso-



iMessage

33



New iMessage

Cancel

To: **Katie Painter**

~~phones the entire time.~~
~~How support is abso-~~
lutely needed. He mentioned the email you told me about at lunch that pete sent regarding hiring judy.

Hmm how did he take all that?

He couldn't understand it

Really?



iMessage



From: Peter Dodier <peter.dodier@ol-usa.com>
Sent: Wednesday, March 08, 2017 5:22 PM
To: Carrie Murphy <Carrie.Murphy@ol-usa.com>
Cc: Alan Baer <alan.baer@ol-usa.com>
Subject: Exeter

Carrie & Alan,

Thank you both for giving Dave the added time to prove himself. I'll present the letter to him on the 20th as discussed.

I know revenue is king and we want the business before we can add people, but I would like to revisit bringing Judy on if she is still available. We have a revenue stream in place and our goal is to maintain and build on that. Judy worked with Katie and I in the past so she understands International and domestic piece. Judy's last job was with Seaview Technologies and she coordinated inbound shipments for them. I also feel with some support she could do sales for us as well.

Please think about as some of the moves we do with Imports and Drayage are time consuming. I wouldn't ask if I didn't think it was important especially when we have one person who is out especially for more than one day.

Judy lives in Exeter!!

Regards,
Peter Dodier
OL USA / TTS Worldwide
140 Epping Road - Suite#3
Exeter, NH 03833
Ph: (866) 927-5637
Direct: (603) 294-4901
Fx: (603) 418-6118
Cell: (603) 770-0927

Jurisdiction	Applicable statutes for states that have addressed suicide in context of workers' comp.	Case law for states that have addressed suicide in the context of worker's comp.	Is Suicide Compensable? Text Applied.
Federal	33 U.S.C. §903(c) Excludes coverage for injuries caused by "the willful intention of the employee to injure or kill himself or another."	<u>Kealoha v. Director, Office of Workers Compensation Programs</u> , 713 F. 3d 521, 524-525 (9th Cir. 2013)("Given the best-reasoned modern trend of case law, we hold that a suicide or injuries arising from a suicide attempt are compensable under the Longshore Act when there is a direct and unbroken chain of causation between a compensable work-related injury and the suicide attempt. The claimant need not demonstrate that the suicide or attempt stemmed from an irresistible suicidal impulse. The chain of causation rule accords with our modern understanding of psychiatry.") Note: Looked at state workers' compensation law as the Longshore Act was intended to provide coverage to workers not covered by states, with intent to provide same remedies as if killed or injured in the course of their employment in most states. <u>Id.</u> , at 525. See also <u>Dir., Office of Workers' Comp. Programs v. Cooper Assoc. Inc.</u> , 607 F.2d 1385, 1387-1388 (D.C. Cir. 1979)(Upheld compensation award under Longshore act to employee who became depressed and committed suicide following business decline)	Yes. Chain-of-causation
Alabama		No published case law identified.	
Alaska		No published case law identified.	
Arizona	A.R.S. § 23-1021 Excludes coverage for injuries which are "purposely self-inflicted"	<u>Graver Tank & Manufacturing Co. v. Industrial Commission</u> , 399 P.2d 664, 668 (Ariz. 1965) "We believe the better rule to be that where the original work-connected injuries suffered by the employee result in his becoming devoid of normal judgment and dominated by a disturbance of mind directly caused by his injury and its consequences, such as severe pain and despair, the self-inflicted injury cannot be considered 'purposeful' within the meaning and intent of the Workmen's Compensation Act." <u>George W. Jackson Mental Health Center v. Lambie</u> , 898 S.W.2d 479, (Ark.App. 1995)	Yes. Chain-of-causation
Arkansas	Ark.Code.Ann §11-9-401(a)(2) Excludes coverage for injury or death caused by "willful intention of the injured employee to bring about the injury or death of himself or another"	<u>Upholding benefits for a suicide arising from work stress</u> , quoting <u>1A Arthur Larson</u> , <u>The Law of Workmen's Compensation</u> , § 36.30 for the proposition that "[T]he intervening cause issue turns not on the employee's knowledge that he is killing himself, but rather on the existence of an unbroken chain of causation from the injury to the suicide.... [I]f the first cause produces the second cause, the second cause is not an independent intervening cause. The question whether the actor appreciated the consequences of his act should not be decisive on the fundamental question whether that act was the natural and foreseeable result of the first injury." <u>Burnight v. Industrial Acc. Commission</u> , 181 Cal.App.2d 816, 825 "In most cases it is unrealistic to determine that suicide is an 'independent' intervening cause. A conscious volition to produce death does not necessarily make the suicide a separate agency unconnected with the primary injury, nor an intentionally or willfully inflicted self-injury. The force set in motion by the original injury may be, and in most cases is, the real cause of the act of suicide. Such forces are employment connected." See Also <u>South Coast Framing, Inc. v. Workers' Compensation Appeals Board</u> , 349 P.3d 141, 147 (Cal. 2015) (Citing <u>Burnbright</u> for the proposition that: "Indeed, even a worker's suicide may be compensable if an industrial injury contributed to it.")	Yes. Chain-of-causation
California	Cal. Lab. §3600 Excludes coverage for injuries that are "intentionally self-inflicted"		Yes. Chain-of-causation

Appendix A

Colorado	C.R.S. 8-41-301(c) Excludes coverage for injuries that are "intentionally self-inflicted"	Jakco Painting Contractors v. Industrial Comm'n of State of Colorado, 702 P.2d 755, 757 (Colo.App.1985) Adopting the chain-of-causation rule, where compensation permitted "where a compensable injury causes a deranged mental condition which in turn causes the suicide."	Yes. Chain-of-causation
Connecticut	Applicable statute not identified	Wilder v. Russell Library Co., 139 A. 644, 646-647 (Conn. 1927). Suicide was held to be compensable when "the insanity is traceable to the employment or its conditions as the direct causal agency which produced it, and that, had it not been for that employment or those conditions, it would not have occurred." In Wilder the deceased claimant, whose suicide was found to be compensable, "was subject by heredity to a predisposition to mental trouble. The long hours she worked caused excessive fatigue. A physical breakdown occurred, which was followed by a nervous breakdown. This developed into a mental condition amounting to insanity, resulting in suicide, an act for which she was not morally responsible, and which was due to uncontrollable impulse. The worry, anxiety, and excessive nervous and mental activity in connection with the library work were all contributing factors in the ultimate mental breakdown. Her physical, mental, and nervous disorders were all attributable to that work and traceable to her employment." Id. at 660-661.	Yes. Chain-of-causation
Delaware	19 Del.C. § 2353(b) Excludes coverage for injuries that are "because of the employee's willful intention to bring about the injury or death of the employee or of another"	Delaware Fire Ctr. v. Fox, 411 A.2d 606 (Del.1980) "[W]illful intention' suggests more than a simple act of volition. Common experience demonstrates the effect of serious injury, pain, depression and despair, and the medications prescribed for them, can influence one's thinking and override one's will, to the end that suicide, though undertaken with knowledge of its nature and consequences, is not an act of the free will but rather a direct product of the incapacity. This influential effect should be recognized in our Workmen's Compensation law, a remedial statute with a benevolent purpose long subject to liberal construction."	Yes. Test seems to be chain-of-causation, but not as clearly set out of other states
Florida	Florida Statute 440.09(3) Excludes coverage for injuries caused by "the willful intention of the employee to injure or kill himself, herself, or another"	Jones v. Leon County Health Department, 335 So.2d 269, 272 (Fla. 1976) "[I]n those cases where 'the injuries suffered by the deceased result in his becoming devoid of normal judgment and dominated by a disturbance of mind directly caused by his injury and its consequences, his suicide cannot be considered 'willful' within the meaning and intent of the Act."	Yes. Chain-of-causation
Georgia	O.C.G.A. §34-9-17(a) Excludes coverage for "intentionally self-inflicted" injuries	McDonald v. Atlantic Steel Co., 210 S.E.2d 344, (Ga.App. 1974) "Although suicide is by definition death self-inflicted, suicide does not ipso facto preclude compensation where injury is its proximate cause; that is, where it is caused by severe pain and despair proximately resulting from the accident sufficient to cause a disturbance of the mind and the overriding of normal judgment to the extent that the act, although 'purposeful' is found to be not 'intentional.' Under this view 'one whose mind has become devoid of normal judgment and dominated by a mental disorder caused by a work connected injury cannot be said to have 'willfully' committed the act of self destruction within the meaning of the statutory prohibition.'" (citations omitted)	Yes. Chain-of-causation
Hawaii	HI Rev Stat § 386-3 Excludes coverage for injuries "incurred by an employee by the employee's willful intention to injure oneself or another by actively engaging in any unprovoked non-work related physical altercation other than in self-defense"	Cariaga v. Del Monte Corp., 652 P.2d 1143, (Haw. 1982) did not discuss the standard for applied, but clearly indicates that a suicide claim can be brought under the Hawaii workers' compensation laws, with the Court holding: "Turning to the remaining issue, upon review of the whole record, we find that the LIRAB's decision in concluding that Cariaga's depression and resulting death stemmed from the absence of his girl friend rather than his employment was not clearly erroneous." Additionally, annotations to HI Rev Stat § 386-3 include: "Law Journals and Reviews Suicide was compensable injury by disease caused by the employment. Haw Supp, 4 HBJ, Nov. 1966, at 24."	Yes. Appears to be a chain-of-causation analysis

Idaho	No published case law identified.		Yes. Chain-of-causation
Illinois	Applicable statute not identified	City of Streator v. Industrial Com'n. 442 N.E.2d 497, 502 (Ill. 1982) Suicide compensable where claimant proves, "by a preponderance of competent evidence that decedent's injury was a causative factor of his suicide. While the injury need not have been the sole or principal cause of the suicide, there must be evidence from which the inference can be drawn that the injury was a causative factor." (multiple internal citations omitted).	Yes. Chain-of-causation
Indiana	Ind. Code § 22-3-2-8 Excludes coverage for "injury or death due to the employee's knowingly self-inflicted injury"	Indiana State Police v. Wiessing, 836 N.E.2d 1038, 1047 (Ind.Ct. App. 2005) Applying the chain-of-causation test and upholding finding that the claim was compensable as the "suicide appears to be the culmination of his inability to deal with the psychological consequences of his involvement in 1994 police action shooting as well as his inability to manage the stress and adjustment issues associated with continuing his career as a law enforcement."	Yes. Chain-of-causation
Iowa	Iowa Code §85.16(1) Excludes coverage for injuries caused "By the employee's willful intent to injure the employee's self or to willfully injure another."	Kostelac v. Feldman's, Inc., 497 N.W.2d 853, 857 (1993) "[W]e now join the majority of jurisdictions who permit recovery of workers' compensation benefits upon proof of a chain of causation directly linking an employment injury to a worker's 'loss of normal judgment and domination by a disturbance of the mind, causing the suicide.'" Overruled Schofield v. White, 95 N.W.2d 40 (Iowa 1959), finding that "since Schofield, society's heightened understanding of mental illness has prompted most jurisdictions to move away from the doctrine's harsh reliance on proof of 'uncontrollable impulse' or 'delirium of frenzy.' It has generally been replaced as majority rule by a chain-of-causation test....". Kostelac, 497 N.W.2d at 856-857.	Yes. Chain-of-causation
Kansas	K.S.A.44-501(a)(1)(A) Excludes coverage when there is a "deliberate intention to cause such injury"	Rodriguez v. Henkle Drilling & Supply Co., 828 P.2d 1335, 1339-1340 (Kan.App. 1992) Adopting the chain-of-causation test, under which the following questions are raised:(1) Was there a work-related injury? (2) Did the work-related injury directly cause the claimant to become dominated by a disturbance of the mind of such severity as to override normal rational judgment? (3) Did this disturbance result in the claimant's suicide.	Yes. Chain-of-causation
Kentucky	KRS 342.610 Excludes coverage for "injury, occupational disease, or death to the employee if the employee willfully intended to injure or kill himself, herself, or another"	Advance Aluminum Co. v. Leslie, 869 S.W.2d 39, (Ky. 1994) "A chain-of-causation rule for determining whether a suicide is legitimately caused by work and is therefore compensable is followed in the majority of jurisdictions and was adopted in Wells v. Harrell, Ky.App., 714 S.W.2d 498 (1986). According to this rule, an employee's suicide is compensable if (1) the employee sustained an injury which itself arose in the course of and resulted from covered employment; (2) without that injury the employee would not have developed a mental disorder of such a degree as to impair the employee's normal and rational judgment; and (3) without that mental disorder, the employee would not have committed suicide."	Yes. Chain-of-causation

Louisiana	La.R.S. 23:1801 Excludes coverage for injuries caused "by the injured employee's willful intention to injure himself or to injure another"	<u>Broussard v. Hollier Floor Covering, Inc.</u> , 602 So.2d 1023, 1029 (La.App. 3rd. 1992) "Both experts essentially agreed that while the decedent made a conscious decision to take his own life, he was without the ability to perceive that he had any other choice but to commit suicide. The Court finds that because he believed that he had no other choice, it negated his free will to control his actions. Hence, in liberally construing the law in favor of the claimant, the Court finds that the decedent lacked free will to prevent his suicide which was the direct result of his depression over his inability to fully recover from his work related back injury. Hence, the Court finds that his death is compensable under the worker's compensation statute." This is a departure from <u>Soileau v. Traveler's Ins. Co.</u> , 198 So.2d 543 (La.App. 3 rd 1967); writ denied, 200 So.2d 665 (La. 1967), wherein the Court held that "where death is caused by suicide, death benefits may not be recovered under the Louisiana Workmen's Compensation Act unless it is established that the suicidal act was the product of some form of insanity, mental disease, mental derangement or psychosis, which resulted from the injury. Otherwise, a suicide is attributable to the decedent's own volitional act which constitutes an 'independent intervening cause.'"	<u>Sponatski</u> , but modified and expanded to covers a lack of free will/inability to perceive other options
Maine		No published case law identified.	
Maryland	MD Lab & Emp Code §9-506. Excludes coverage for "an intentional, self-inflicted accidental personal injury"	<u>Young v. Hartford Acc. and Indem. Co.</u> , 492 A.2d 1270, 1274 (Md.Ct.App. 1985) "depending on the circumstances, death benefits under the Act may be paid where the worker has in fact committed suicide.... To determine whether the worker's death arose out of and in the course of his employment, we applied a proximate cause test to the relationship between the death and the accidental injury. We said that, with respect to workers' compensation cases, 'proximate cause means that the result could have been caused by the accident, and that there has not intervened, between the accident and the result, any other efficient cause.' A suicide attempt is not always an intervening cause which breaks the nexus between the accidental injury and the injury suffered in the suicide attempt. The issue turns on the facts in a given case." (internal citations omitted).	Proximate cause test
Massachusetts	G.C. c. 152 §26- Suicide is compensable when "due to the injury, the employee was of such unsoundness of mind as to make him irresponsible for his act of suicide."	<u>In re Sponatski</u> , 108 N.E. 466, 468 (1915) held that a suicide was compensable only when an injury caused the victim to take his own life through an uncontrollable impulse or in a delirium of frenzy "without conscious volition to produce death, having knowledge of the physical consequences of the act." Reversed legislatively by G.C. c. 152 §26-A.	Allowed by statute when there is an unsoundness of mind
Michigan	MI Comp L §418.305 Excludes coverage if employee was "injured by reason of his intentional and wilful misconduct"	<u>Hammons v. City of Highland Park Police Dept.</u> , 364 N.W.2d 575, 581 (Mich. 1984) Adopting the chain-of-causation test, finding that "the questions of causation or intervening causation and intention should not turn on whether the worker knows what he is doing. A mind disoriented by physical or mental pain may be so impaired in its reasoning capacity that, although aware of the choices, it is incapable of rational choice."	Yes. Chain-of-causation
Minnesota	Minn.Stat. Sec. 176.021(1) Excludes coverage when an injury is "intentionally self-inflicted"	<u>Meils by Meils v. Northwestern Bell Tel. Co.</u> , 355 N.W.2d 710, 715 (Minn. 1984), "We conclude that the chain of causation standard is a realistic and reasonable criterion for determining whether or not a death by suicide is compensable under the Workers' Compensation Act, and we adopt it as the standard henceforth applicable in Minnesota. The burden of proof is on the claimant to establish by substantial evidence that the employee's work-related injury and its consequences directly caused a mental derangement of such severity that it overrode normal, rational thinking and judgment."	Yes. Chain-of-causation

Mississippi	Miss. Code §71-3-7 Excludes coverage if "it was the willful intention of the employee to injure or kill himself or another."	Prentiss Truck & Tractor Co. v. Spencer, 87 So.2d 272, 279 (Miss. 1956) Finding suicide compensable as the evidence supported that claimant "was suffering from a mental disturbance of depressive insanity and did not have the mental capacity to determine the consequences of his act; that his mental condition was brought about by the injury received by him while working for his employer, and that his reasoning faculties were so far impaired that his act of self-destruction was not voluntary and willful... and that there was a direct causal connection between the injury sustained by the deceased employee on March 6, 1951, and his suicide two years later."	Yes. Chain-of-causation
Missouri	Missouri Statute §287.120.3 Excludes coverage for "injury or death due to the employee's intentional self-inflicted injury, but the burden of proof of intentional self-inflicted injury shall be on the employer or the person contesting the claim for allowance"	Thomas v. City of Springfield, 88 S.W.3d 155, 160 (Mo.App. S.D. 2002) "Notwithstanding the growing prevalence of the 'chain of causation' rule in other jurisdictions, Missouri continues to adhere to the so-called 'Sponatski' test, originally stated in In re Sponatski, 220 Mass. 526, 108 N.E. 466 (1915). Under this harsher rule, a suicide or attempt thereof is compensable only if '(1) as the result of a physical injury, (2) the [worker] was possessed of an uncontrollable impulse to commit suicide or was in a delirium of frenzy, (3) did not consciously intend to kill himself, and (4) did not realize the consequences of his act of self-destruction.'"	Sponatski
Montana	Applicable statute not identified	Nave v. State Compensation Mut. Ins. Fund, 835 P.2d 706, 709 (Mont. 1992), when determining whether a suicide was compensable the test was "that the injury must be a substantial contributing cause in the sense that death would not have occurred but for such injuries." (citations omitted).	Substantial contributing cause
Nebraska	Neb.Rev.Stat. § 48-102 Excludes coverage for injuries for willful negligence	Friedeman v. State, 339 N.W.2d 67, 72 (Neb. 1983) Suicide can be compensable, finding that "scientific testimony of factors that can override a person's will, to the extent that even the knowledge of the consequences of the act of suicide do not prevent the act from taking place, are admissible to demonstrate that the act was not willful... It is elementary that an act which is not voluntary is also not willful."	Yes. Chain-of-causation
Nevada	NRS 616C.230(1) Excludes coverage for injuries "[c]aused by the employee's willful intention to injure himself or herself."	Vredenburg v. Sedgwick CMS, 188 P.3d 1084 (2008)(Rejected the "voluntary willful choice test" in favor of "the modern majority position referred to as the chain-of-causation" test. Id. at 1088. Adopted the "most common formulation" of the chain-of-causation test, which "requires the claimant to demonstrate that (1) the employee suffered an industrial injury, (2) the industrial injury caused some psychological condition severe enough to override the employee's rational judgement, and (3) the psychological condition caused the employee to commit suicide." Id., at 1089-1090.	Yes. Chain-of-causation
New Hampshire	NH RSA 281-a:2(XI) Excludes coverage for injuries "proximately caused by the employee's willful intention to injure himself or injure another"	There is no case law in New Hampshire on-point. In the context of suicide and worker's compensation in any capacity, only two cases were identified. In <u>Cutter v. Hutchinson Bldg. & Lumber Co.</u> , 102 N.H. 14, 148 A.2d 662, (1959)(workers' compensation benefits were denied for injuries suffered when an employee jumped out a second-floor window in an apparent suicide attempt); and <u>Boody v. K. & C. Manufacturing Co.</u> , 77 N.H. 208, 90 A. 859, (1914)(where an employee drowned and dicta referenced that if the employee had "jumped into the river to try to kill himself" than the death would not have been "accidental" within the meaning of the workers' compensation law in effect at that time). However, in neither case was there any claim, assertion, or even discussion that either claimant had committed, or attempted to commit, suicide as a result of a work-related injury (mental or physical) or any other work-related reason.	For the CAB to determine.

New Jersey	N.J.S.A. 34:15-7 Excludes coverage "when the injury or death is intentionally self-inflicted"	Kahle v. Plochman, Inc., 428 A.2d 913, 917 (N.J. 1981) "We hold that the chain-of-causation test is a more realistic and reasonable standard than the Sponatski rule. It is to be incorporated henceforth in the New Jersey law of workers' compensation. Under the rule we adopt today an employee's death by suicide is compensable where the original work-connected injuries result in the employee's becoming dominated by a disturbance of mind directly caused by his or her injury and its consequences, such as extreme pain and despair, of such severity as to override normal rational judgment. A suicide committed by an employee suffering from such disturbance of mind is not to be considered 'intentional' within the meaning and intent of N.J.S.A. 34:15-7, even though the act itself may be volitional."	Yes. Chain-of-causation
New Mexico	NMSA Sec. 52-1-11 Excludes coverage where the injury is "willfully suffered by him or intentionally inflicted by himself"	Schell v. Buell ECD Co., 44, 690 P.2d 1038, 1042 (N.M.App. 1983) "[W] here the original work-connected injuries suffered by the employee result in his becoming devoid of normal judgment and dominated by a disturbance of mind directly caused by his injury and its consequences, such as severe pain and despair, the self-inflicted injury cannot be considered 'purposeful' within the meaning and intent of the Workmen's Compensation Act." The court went on to explain that "once causation has been established, as it has here, the act of suicide cannot then be said to be willful or intentional within the meaning of the statute since its causation ultimately relates back to the original injury rather than existing as an independent and intervening cause." <u>Id.</u>	Yes. Chain-of-causation
New York	NY Workers' Compensation Law §10 Excludes coverage for injuries cause "by willful intention of the injured employee to bring about the injury or death of himself or another."	Friedman v. NBC Inc., 178 A.D.2d 774, 774 (N.Y. App. Div. 1991): "It is well settled that if a work-related injury causes 'insanity', 'brain derangement' (<u>Matter of Delinousha v. National Biscuit Co.</u> , 248 N.Y. 93, 94, 161 N.E. 431) or 'a pattern of mental deterioration' (<u>Matter of Reinstein v. Mendola</u> , 39 A.D.2d 369, 371, 334 N.Y.S.2d 488, aff'd 33 N.Y.2d 589, 347 N.Y.S.2d 455, 301 N.E.2d 438), which in turn causes suicide, death benefits may be awarded under Worker's Compensation Law § 10."	Cites Florida standard extensively, but does not specify that this standard is adopted
North Carolina	N.C. Gen. Stat. 97-12 Excludes coverage for injuries resulting from an employee's "willful intention to injure or kill himself or another"	Petty v. Associated Transport, Inc., 173 S.E.2d 321, 329 (N.C. 1970), "We conclude that the chain-of-causation test effectuates the purpose and intent of the Workmen's Compensation Act. We hold, therefore, that an employee who becomes mentally deranged and deprived of normal judgment as the result of a compensable accident and commits suicide in consequence does not act willfully within the meaning of G.S. s 97-12."	Yes. Chain-of-causation
North Dakota	N.D.C.C. §65-01-02(1)(b)(2) Excludes coverage for injuries "willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another"	Unclear whether allowed under the right circumstances. In <u>Kackman v. North Dakota Workers' Compensation Bureau</u> , 488 N.W.2d 623, 625 (N.D. 1992) The Supreme Court affirmed a denial of benefits, but not because suicide was not compensable. Instead the Court upheld the Bureau's determination that, in "there was 'no cause and effect relationship between [Richard's] work injuries and [his] suicide.'" This leaves open whether or not, if there had been a cause and effect relationship, the suicide would have been compensable.	Unclear. Would appear to be applying chain-of-causation
Ohio	ORC §4123.46 Excludes coverage for injuries that are "purposely self-inflicted"	<u>Borbely v. Presole Everlock, Inc.</u> , 565 N.E.2d 575, 579 (1991), adopted "a 'chain-of' causation' approach is more logical and enlightened in determining cases involving a suicide that is alleged to be the proximate result of a work-related injury." Adopted the Pennsylvania 3-part test. <u>Borbely overruled Indus. Comm. V. Brubaker</u> , 196 N.E. 409 (Ohio 1935), which had previously required that the employee suffered a "mental derangement to the extent that the employee could not entertain a fixed purposes to take his own life." <u>Borbely</u> .	Yes. Chain-of-causation

Oklahoma	85A O.S. §35(2) Excludes coverage where "the injury or death was substantially occasioned by the willful intention of the injured employee to bring about such compensable injury or death" (formerly 85 O.S.1981 §11)	Matter of Death of Stiroer. 672 P.2d 1158, 1161 (Okla. 1983) Joining the majority of jurisdictions in adopting the chain-of causation test, whereby "an employee's death by suicide is compensable if the original work-related injuries result in the employee's becoming dominated by a disturbance of mind directly caused by his/her injury and its consequences, such as extreme pain and despair, of such severity to override normal or rational judgment. The act of suicide is not an intervening cause of death and the chain of causation is not broken in cases where the incontrovertible evidence reflects that, but for the injury, there would have been no suicide. A suicide committed under these circumstances cannot be held to be intentional even though the act itself may be volitional."	Yes. Chain-of-causation
Oregon	ORS 656.156 Excluded coverage where injury or death results "from the deliberate intention of the worker to produce such injury or death"	McGill v. SAIF. 724 P.2d 905, 906 (Or.App. 1986), rev. den. 730 P.2d 1251 (Or. 1986), "[A] worker's suicide resulting from work-related stress which produced a mental derangement that impaired his ability to resist the compulsion to take his own life cannot be said to have arisen from a 'deliberate intention' under ORS 656.156(1)."	Yes. Chain-of-causation
Pennsylvania	Title 77 P.S. § 431 Excludes coverage for injury or death that is "intentionally self-inflicted"	McCoy v. W.C.A.B. (McCoy Catering Services, Inc.), 102 Pa.Cmwlth. 436, 518 A.2d 883, (1986) Adopting the chain of causation test, under which a claimant must prove: (1) that there was initially a work-related injury; (2) which injury directly caused the employee to become dominated by a disturbance of the mind of such severity as to override normal rational judgment; and (3) which disturbance resulted in the employee's suicide.	Yes. Chain-of-causation
Rhode Island	RI Gen L. §28-33-2 Excludes coverage "for the injury or death of an employee occasioned by his or her willful intention to bring about the injury or death of himself or herself or another"	A case on point was not identified, but in <u>Clift v. Narragansett Television L.P.</u> , 688 A.2d 805, Endnote 4, (R.I. 1996), the Court noted: "In the workers' compensation field, liability for a decedent's suicide has been found when 'the incontrovertible evidence shows that, without the injury, there would have been no suicide.... That rule is essentially a "but-for" rule....' (internal citations omitted).	Yes. "But-for" rule
South Carolina	S.C.Code Ann. §42-9-60 Excludes coverage if the injury or death due to the "wilful intention of the employee to injure or kill himself or another."	Thompson ex rel. Harvey v. Cisson Const. Co., 659 S.E.2d 171, 188 (S.C. 2008) Decline to follow "the majority of jurisdictions" and finding that "'Willful intent' is the standard to be applied in South Carolina in determining whether a self-inflicted injury or death is compensable..." However, the South Carolina Supreme Court granted petitioner's request for a writ of certiorari, but the appeal was withdrawn based on a settlement agreement that rendered the appeal moot. The South Carolina Supreme Court granted the motion to withdraw and vacated the Court of Appeals opinion. <u>Thompson v. Cisson Const.</u> , 385 S.C. 451, (S.C. 2009)	Unclear. <u>Sponatski</u> applied by appellate court, but decision vacated by S.C. Supreme Court.
South Dakota		No published case law identified.	
Tennessee		No published case law identified.	
Texas	Texas Labor Code §406.032 Excludes coverage when the injury was "caused by the employee's wilful attempt to injure himself"	<u>Saunders v. Texas Employers' Ins. Ass'n</u> , 526 S.W.2d 515, 517-518 (TX 1975) found suicide to be compensable "in cases where the effects of injuries suffered by the deceased result in his becoming dominated by a derangement of the mind which impairs the ability to resist the impulse to take his own life to the extent that the decedent was in fact unable to control it, the suicide cannot be termed as willful...."	Modified version of <u>Sponatski</u>
Utah		No published case law identified. There is a case, <u>Crapo v. Industrial Com'n of Utah</u> , 922 P.2d 39 (Utah App. 1996), where there was an attempted suicide and an associated workers' compensation claim was denied. However, the suicide attempt occurred as a result of the employee being caught stealing from his employer, not as a result of a physical or mental work injury.	

Vermont	21 V.S.A. § 649 Excludes coverage for "injury caused by an employee's willful intention to injure himself, herself, or another"	<p><u>McKane v. Capital Hill Quarry Co.</u>, 134 A. 640, 640-641 (Vt. 1926)"[W]hen the insanity resulting from an accident ends in a suicide which is the result of an uncontrollable impulse or in a delirium of frenzy, and without conscious volition to produce death having knowledge of the physical consequences of the suicidal act, there is a direct and unbroken causal connection between the accident and the death, and compensation therefor is to be awarded. But when the suicide is the result of a voluntary, willful [sic] choice, with knowledge of the purpose and physical effect of the act, a new and independent agency intervenes, breaks the chain of causation, and compensation is to be denied." But, see also: <u>E. H. v. Mack Molding Co.</u>, Opinion No. 14-09WC (May 13, 2009). While a Department level decision, the hearing officer writes: "This Department previously has noted that the continued viability of the court's reasoning in McKane is questionable given modern developments in both workers' compensation law and the study and treatment of mental illness. The critical inquiry is not whether a suicide can be said to have been planned rather than impulsive. Rather, the key question is simply whether a subsequent injury – here, a suicide attempt – flowed naturally from the original compensable injury – here, Claimant's thumb injury and resulting PTSD. If it did, then it too should be found compensable." (internal citation omitted)(A copy of this Decision is attached, see paragraphs 12-14)</p>	Sponatski by the VT Supreme Court, but not followed at the Department level.
Virginia	Va. Code Ann. § 65.2-306. No compensation awarded when injury or death caused by "employee's willful misconduct or intentional self-inflicted injury"	<p><u>Food Distributors v. Estate of Ball</u>, 485 S.E.2d 155, 161 (Va.App. 1997) Upholding the commission's determination that "[T]he appropriate test to be adopted in Virginia is that designated as the chain-of-causation rule, wherein where the injury and its consequences directly result in the worker's loss of normal judgment and domination by a disturbance of the mind causing the suicide, his suicide is compensable, with a suicide committed by the worker suffering from this degree of disturbance not to be considered 'willful' or an 'intentional' injury even though the action is volitional since the suicide relates back to the original injury rather than existing independently of the injury." Casemaker has <u>Ball</u> as overruled by <u>Amoco Foam Products Co. v. Johnson</u>, 510 S.E.2d 443 (1999), but <u>Amoco</u> does not cite <u>Ball</u> and the issue was a chain of injuries - ankle injury causes a non-work related knee injury, which then caused a second non-work related knee injury. the court described it as a chain of consequences injury leading to a second chain of consequences injury. This does not seem to be applicable as overruling <u>Ball</u>.</p>	Ball says yes, and applies chain-of-causation. Unclear what impact, if any, would result from the <u>Amoco</u> decision.
Washington	RCW §51.32.020 Excludes coverage for injury or death caused by "the deliberate intention of the worker himself or herself to produce such injury or death"	<p><u>Schwab v. Department of Labor and Industries</u>, 459 P.2d 1, 6 (Wash. 1969), summarizing the history or the compensability of suicide as follows: "[W]e have tended to lean away from characterizing, in the traditional tort sense, volitional or conscious suicidal acts as an independent intervening cause precluding compensation. Rather, it appears that we have inclined more toward looking upon RCW 51.32.020 as erecting a statutory bar between cause and a proximately related result. Likewise, it would appear that we have broadened, somewhat, the concept, found in <u>In re Sponatski</u>, 220 Mass. 526, 108 N.E. 466 (1915), that an injury occasioned suicidal death to be compensable must occur from 'an uncontrollable impulse or in a delirium of frenzy without conscious volition to produce death,' by extending it to include irresistible impulse, delirium caused by injury related drugs, pain, and suffering and/or other forms of acute dementia, any of which render the injured workman incapable, at the pertinent time, of forming a volitional and deliberate intent to commit suicide."</p>	Modified version of Sponatski

West Virginia	WV Code, 23-4-2 Excludes coverage for injury or death which results from a "self-inflicted injury"	Hall v. State Workmen's Compensation Com'r, 303 S.E.2d 726, 730-731 (W. Va. 1983) "It is apparent that the chain of causation rule developed not only because of a general dissatisfaction with the harsh Sponatski rule but also from advances in modern psychiatry as well. The rule, furthermore, abandons the vague concepts of 'delirium of frenzy' as expressed in Sponatski, and 'brain derangement' as expressed in the New York rule. We are of the view that of the three rules, the chain of causation rule is the one most consistent with the policy as stated by this Court... 'Workmen's compensation statutes, being remedial, should be liberally construed in favor of the claimants for workmen's compensation benefits.' We therefore adopt the chain of causation rule and hold that an employee's suicide which arises in the course of and results from covered employment is compensable under W. Va. Code, 23-4-1, provided, (1) the employee sustained an injury which itself arose in the course of and resulted from covered employment, and (2) without that injury the employee would not have developed a mental disorder of such degree as to impair the employee's normal and rational judgment, and (3) without that mental disorder the employee would not have committed suicide."	Yes. Chain-of-causation
Wisconsin	Wis. Stat. § 102.03 Excludes coverage if any injury is "intentionally self-inflicted"	Brenne v. Department of Industry, Labor and Human Relations, 156 N.W.2d 497, 501 (Wis. 1968) "While the act of suicide may be an independent intervening cause in some cases, it is certainly not so in those cases where the incontrovertible evidence shows that, without the injury, there would have been no suicide; that the suicide was merely an act, not a cause, intervening between the injury and the death, and that it was part of an unbroken chain of events from the injury to the death."	Yes. Chain-of-causation
Wyoming	WY Stat. § 27-14-102(a)(xi)(B)(2) Excludes coverage for injury caused by "employee's willful intention to injure or kill himself or another"	State ex rel. Wyoming Workers' Compensation Div. v. Ramsey, 839 P.2d 936, 940 (Wyo. 1992) Adopting the chain-of-causation principle "as most logical and supported by the current weight of persuasive precedent" and noting that "[t]he concept that ties the causal relationship, unbroken chain, cases together, is that the act causing death was an intervening act but not an intervening cause."	Yes. Chain-of-causation

E. H. v. Mack Molding Company

(May 13, 2009)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

E. H.

Opinion No. 14-09WC

v.

By: Jane Gomez-Dimotsis
Hearing Officer

Mack Molding Company

For: Patricia Moulton Powden
Commissioner

State File No. Y-52409

OPINION AND ORDER

Hearing held in Montpelier on October 23, 2008.
Record closed on November 25, 2008.

APPEARANCES:

Richard Bowen, Esq. for Claimant
Keith Kasper, Esq. for Defendant

ISSUE:

Is Claimant's mental health condition causally related to the compensable injured he suffered to his thumb on August 31, 2006?

EXHIBITS:

Joint Medical Exhibit with supplemental file from Valley Regional Hospital

Claimant's Exhibit 1: Dr. Halikias' *Curriculum Vitae*
Claimant's Exhibit 2: Nurse Case Manager notes
Claimant's Exhibit 3: DSM-IV-TR attached to Dr. Batt's deposition

Defendant's Exhibit A: Dr. Mann's *Curriculum Vitae*
Defendant's Exhibit B: MMPI-2 Testing Manual

CLAIM:

Medical benefits, including hospitalization, pursuant to 21 V.S.A. §640
Temporary total disability benefits pursuant to 21 V.S.A. §642
Attorney's fees and costs pursuant to 21 V.S.A. §678

FINDINGS OF FACT:

Stipulated Facts

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was an employer as those terms are defined in the Vermont Workers' Compensation Act.
2. Judicial notice is taken of all relevant forms and correspondence contained in the Department's files relating to this claim.
3. Claimant suffered a personal injury to his thumb arising out of and in the course of his employment with Defendant. Claimant tried to commit suicide approximately one year later.
4. Claimant's average weekly wage on the date of injury, August 31, 2006, was \$703.12. Claimant has no dependents.
5. On August 5, 2007 Claimant began receiving treatment for depression and Post Traumatic Stress Disorder (PTSD) as a result of an alleged suicide attempt.
6. Defendant has denied the compensability of all psychiatric-related bills and conditions associated with the alleged suicide treatment and all medical expenses directly associated therewith. Defendant has continued to pay all medical benefits otherwise associated with Claimant's compensable thumb injury and also has continued payment of Claimant's temporary total disability benefits after August 5, 2007.

Claimant's Background and Brief History

7. Claimant, now 75 years old, was born June 1, 1934 in Lebanon, New Hampshire and has lived in Windsor County, Vermont for most of his life. He was forced to quit school in the eighth grade when his father died. He did various jobs and worked for a paper company for twenty-four years until the company closed. After other employment, Claimant worked for Defendant for approximately twelve years until his accident.
8. Claimant has been married three times and has adult children. He was divorced from his first and second wives after many years of marriage. He separated from his third wife after less than three years of marriage and was living alone at the time of the accident. There is evidence from a Massachusetts General Hospital social worker that Claimant informed her he had experienced feelings of depression for about a year prior to his work accident due to his separation and expected divorce from his last wife.

The Accident

9. Claimant began work on August 31, 2006 at 11:00 p.m. as a machine operator at Defendant's company. When he began his shift, the machines were leaking oil onto the floor. However, the presses do not shut down during shift changes. After working for a short while, Claimant lost his footing due to the oil on the floor. When he put his hand out to break his fall he caught his thumb in the press.
10. With his thumb caught and almost severed from his hand, Claimant could not reach the buttons that would turn off the press. He began screaming for help, but because the machinery noise on the plant floor was so loud, no one heard him. Claimant remained caught in the machine for almost five minutes. Finally, a co-worker came to his aid, shut down the machine and released Claimant's thumb. Claimant was driven to Springfield Hospital, and then, because his injury was so serious, transported by ambulance to Massachusetts General Hospital. He did not receive treatment until 7:33 a.m. on September 1st, seven or eight hours after the accident had occurred.

Post- Accident Treatment

11. Claimant was diagnosed with a fracture of the proximal phalanx in his thumb. He had open reduction surgery to repair his digital artery and thumb.
12. After his hospitalization, on September 3, 2006 Claimant returned home with his thumb in a splint. Thereafter, he followed up with his doctors at Massachusetts General Hospital on a weekly basis. He was re-hospitalized after he developed a serious infection in his thumb that necessitated both intravenous and oral antibiotic treatment.
13. After some months, Claimant's treating physician at Massachusetts General Hospital, Dr. Obeng, became concerned both about Claimant's mental state and about the possibility that he might be developing reflex sympathetic dystrophy. Dr. Obeng referred Claimant to Dr. Fanciullo, a pain management specialist at Dartmouth Hitchcock Medical Center.
14. Dr. Fanciullo first evaluated Claimant on April 10, 2007 and diagnosed him with PTSD. Dr. Fanciullo did not enunciate the specific criteria he used to make this diagnosis, but did note that Claimant reported having nightmares of his thumb crush injury. Dr. Fanciullo treated Claimant until approximately September 2007. He prescribed Cymbalta to treat Claimant's depression and pain medications for his physical symptoms. Unfortunately, these proved not to be particularly helpful. In May 2007 Dr. Fanciullo noted that Claimant was not really any better. He continued to treat Claimant until approximately September 2007, at which point he reported that if Claimant chose not to pursue psychiatric treatment options he might soon be at end medical result.
15. Claimant next was referred to Dr. Rosen at Dartmouth Hitchcock Medical Center to help increase the function in his thumb and to reduce his pain. There was a question at this time as to whether Claimant's thumb should be amputated.

16. During the summer of 2007 Claimant became increasingly despondent over the pain and functional limitations caused by his thumb injury. He lived alone, and because the injury was to his dominant thumb, daily chores and simple activities that most of us take for granted – buttoning his shirts, for example – were problematic. Claimant also was unable to play the guitar, a pastime he had always enjoyed.

Suicide Attempt, Hospitalization and Treatment

17. On August 2, 2007 Claimant was reported missing to the Vermont State Police. He last had been seen in Bellows Falls, near the Connecticut River. Four days later, he was found near the river in Charleston, New Hampshire. Claimant was transported to the hospital emergency room and admitted to the intensive care unit. At that time, he was suffering from dehydration, chest pain, a possible pulmonary embolism and neck pain. In addition, he exhibited a high level of confusion and expressed feelings of uselessness and depression. Claimant admitted that he had attempted to commit suicide by drowning but was unsuccessful and had been wandering for days without food or water.
18. While hospitalized, Claimant treated with Dr. Burns, who reported symptoms of PTSD on his notes. Subsequently, he was referred to Dr. Mazur at the hospital's Valley Regional Behavioral Unit. Dr. Mazur diagnosed Claimant with a major depressive disorder. At their first interview, Claimant told Dr. Mazur he was depressed due to the separation from his third wife. Claimant expressed feelings of anger, uselessness due to his loss of employment and depression. However, there was no mention at all in Dr. Mazur's initial report of Claimant's 2006 thumb injury.
19. Dr. Mazur concluded that several stressors had built up to lead Claimant to want to kill himself. Among these were the thumb accident, the partial loss of its use and the pain related to it, his separation from his third wife and his inability to work. Dr. Mazur noted that Claimant had planned on continuing to work until he died.

Additional Psychiatric Treatment and Experts' Conclusions

20. At Dr. Mazur's referral, Claimant began treating with Dr. Batt in August 2007. Dr. Batt is a board certified forensic psychiatrist who has been in private practice for more than sixteen years. He frequently has treated patients suffering from PTSD, particularly military veterans.
21. Using the criteria adopted by the American Psychiatric Association in the DSM-IV-TR, Dr. Batt diagnosed Claimant with severe PTSD. The DSM-IV requires that six criteria, labeled A through F, be met in order for a PTSD diagnosis to be made. In Claimant's case Dr. Batt found that eleven criteria had been met.
22. The first diagnostic criterion is that the person must have been exposed to a traumatic event involving threatened death or serious injury, as a result of which he or she experienced intense fear, helplessness or horror. Dr. Batt concluded that the injury Claimant suffered at work, in which his thumb was caught for many minutes before anyone appeared to help him, qualified as such an event.

23. Criterion B requires that the person experience intrusive recollections of the traumatic event, such as distressing dreams, flashbacks or intense psychological distress when exposed to cues that resemble it in some way. In Claimant's case, Dr. Batt noted that he had recurrent distressing dreams about the way his thumb injury had occurred and reported intense psychological distress when he returned to his former work site. Dr. Batt found these symptoms sufficient to satisfy Criterion B.
24. Criterion C encompasses avoidant and/or numbing behaviors. Under this criterion, Dr. Batt noted that Claimant avoided activities, places or people that would arouse recollection of his trauma. He did not like to talk about the event, and avoided thoughts, feelings or conversations about it. He felt detached from others. He was unable to recall certain aspects of the event. He had a sense of a foreshortened future or career, because he had worked all his life and couldn't imagine life without work. Dr. Batt found these behaviors sufficient to satisfy Criterion C.
25. Criterion D requires evidence of hyper-arousal, for example, difficulty falling or staying asleep, difficulty concentrating, hyper-vigilance or an exaggerated startle response. Dr. Batt found sufficient evidence of these behaviors to meet this criterion as well.
26. Criterion E requires that the behaviors noted in B, C and D have lasted for more than one month, and Criterion F requires that they have caused significant distress or impairment in social, occupational or other important areas of functioning. Dr. Batt found both of these criteria to have been met in Claimant's case.
27. Dr. Batt acknowledged that Claimant was depressed about the dissolution of his third marriage, but in his opinion this was not the cause of his PTSD. Dr. Batt noted that Claimant had been separated from his wife for almost a year prior to his injury, but was able to work full-time.
28. Dr. Batt believed that Claimant had tried to commit suicide on the anniversary of his thumb accident. In fact, Claimant's suicide attempt occurred several weeks earlier than the actual anniversary date.
29. Dr. Batt was concerned that Claimant would attempt suicide again. In his opinion Claimant needed a complete treatment evaluation, including an evaluation with a neuropsychologist experienced with brain imagery. Dr. Batt believed that Claimant needed ongoing therapy, but that he did not understand either the seriousness of his condition or the value of psychotherapy. In Dr. Batt's opinion, it could take Claimant up to five years to reach end medical result. In the meantime, he did not think Claimant should try yet to return to work.
30. Dr. Batt began treating Claimant in August 2007. Claimant discontinued treatment in August 2008 after Defendant ceased paying for it. In Dr. Batt's opinion, Claimant's prognosis was guardedly optimistic only if he continued psychiatric treatment and medication management. Even with that, Dr. Batt felt that Claimant likely had suffered permanent and severe psychological trauma.

31. At the suggestion of Claimant's counsel, Claimant also saw Dr. Halikias for a mental health evaluation in December 2007. Dr. Halikias has a doctorate in forensic clinical psychology. He has practiced for many years. He is board certified in assessment psychology and is a member of the American Psychology Association. He now specializes in court evaluations, teaching doctoral students, consultations and assessments. Dr. Halikias teaches doctoral candidates in psychology how to administer MMPI assessments.
32. Dr. Halikias administered a battery of tests to Claimant. He found clear, robust symptoms of PTSD with all diagnostic criteria met. He also found Claimant was not a malingerer but had a strong work ethic. He did not find Claimant exaggerated his pain or depression.
33. Claimant told Dr. Halikias that it would be too frightening for him to return to work for Defendant. He reported that it was stressful for him to be in small places like elevators since his injury. He also expressed problems with daily living activities and intrusive imagery of the workplace accident. He expressed feelings of worthlessness at having become unemployed for the first time in his life since 8th grade.
34. Claimant also informed Dr. Halikias of his vague recollection of his suicide attempt approximately a year after his thumb injury.
35. There is conflicting evidence as to what help Dr. Halikias gave Claimant during the course of his psychological test battery. At Claimant's request, when Dr. Halikias administered certain tests, such as the MMPI-2, he read some of the questions to him aloud. This was to account for Claimant's age and low level of formal education. In addition, because Claimant was experiencing pain in his hand, Dr. Halikias also may have assisted him by filling in the answers to certain questions, all at Claimant's direction. Dr. Halikias did not believe that the assistance he provided skewed Claimant's test results in any way.
36. In testimony, Dr. Halikias pointed out that the MMPI-2 does not have an index for PTSD. Although he administered the MMPI, he relied on the Trauma Symptom Inventory for part of his diagnosis.
37. As Dr. Batt had done, Dr. Halikias used the DSM-IV-TR for his diagnosis and concluded that Claimant presented a clear, convincing and robust portrait of a person suffering from PTSD. Unlike Dr. Batt, however, Dr. Halikias felt that vocational rehabilitation would be helpful to Claimant and that he should return to work when he could. Dr. Halikias recommended that Claimant continue with antidepressant medications and weekly mental health services.

38. At Defendant's request, Claimant underwent an independent psychological evaluation with Dr. Mann, a psychologist, in December 2007 and February 2008. Dr. Mann administered a battery of tests, including the MMPI-2, the BHI-2 and the VIP tests. Dr. Mann acknowledged that when taking the MMPI-2 test, Claimant expressed significant difficulties due to his limited formal education. Claimant needed additional time to complete the testing procedure, and for part of the testing Dr. Mann utilized an audiotape of the questions so that Claimant would not have to read them himself.
39. Based on his evaluation, Dr. Mann believes that Claimant is at least partially malingering, as reflected by evidence that he is "grossly exaggerating physical and psychological symptoms" for external incentives.
40. Dr. Mann believes that at one time Claimant may have met the diagnosis of PTSD, but that his condition had improved in the year between his initial injury and his suicide attempt. In Dr. Mann's opinion, Claimant's separation from his third wife was the intervening factor that caused him to attempt suicide. Dr. Mann reported that Claimant had expressed to him that he was now able to attend antique auctions and do more socializing than he had previously. This led Dr. Mann to conclude that Claimant was recovered from his PTSD. Dr. Mann also noted that Claimant had informed him that he wanted to get on with his life, disengage from psychiatric care and visit with family and friends. As Dr. Batt noted, however, it has always been clear that Claimant does not believe in psychology.
41. In reaching his conclusion that Claimant was recovered from PTSD and now partially malingering, Dr. Mann relied to some extent on Claimant's self-report that he is doing well and engaging more with people and activities. This seems at odds with his own interpretation of Claimant's personality profile, in which he described Claimant as someone who attempts to place himself in an overly positive light by minimizing his problems. As to Claimant's response to other test questions, in which he agreed with such statements as "things have been terrible at home," that he has problems sleeping and that he has "more concerns than most people," Dr. Mann's interpretation was that Claimant purposely had biased his answers in a negative manner.
42. In concluding that Claimant no longer suffered from PTSD, Dr. Mann did not use the DSM-IV-TR criteria. Instead, he used the PK scale contained within the MMPI-2. According to Dr. Mann, Claimant tested in the normal range for PTSD on that scale, meaning that he did not suffer from the disorder.
43. In reaching his diagnosis, Dr. Mann also relied heavily on Dr. Mazur's report that Claimant had advised him immediately after his suicide attempt that he was depressed about the dissolution of his marriage. Dr. Mann stated that he completely agrees with Dr. Mazur's conclusion that Claimant's suicide attempt was not related to his thumb injury. Dr. Mann concluded that Claimant had a major depressive disorder, which was in full remission by February 2008.

44. During their hearing testimony, both Dr. Mann and Dr. Halikias criticized each other regarding the manner in which each had tested Claimant, whether the test was appropriate for a man of Claimant's age and education and whether each knew all of the relevant facts regarding Claimant's history.
45. Claimant's request for attorney's fees and costs is unclear.

CONCLUSIONS OF LAW:

1. Claimant bears the burden of proof to establish all of the facts essential to the rights asserted. *Goodwin v. Fairbanks*, 123 Vt. 161 (1963).
2. To establish a so-called "physical-mental" claim, one involving a mental injury that results from a work-related physical injury, Claimant must prove a causal nexus between a compensable physical injury and a psychological impairment. *Merrill v. Town of Ludlow*, 147 Vt. 186 (1986); *Blais v. Church of Christ of Latter Day Saints*, Opinion No. 30-99WC (July 30, 1999).
3. When the injury is obscure and a lay person would have no well-grounded opinion as to causation, expert medical testimony is necessary to lay the foundation for an award. *Severinghaus v. Banner Publishing Company*, Opinion No. 14-98WC (March 13, 1998).
4. When faced with conflicting expert medical opinions the Department traditionally uses a five-part test to determine which is the most persuasive: (1) the nature of treatment and the length of time there has been a patient-provider relationship; (2) whether the expert examined all pertinent records; (3) the clarity, thoroughness and objective support underlying the opinion; (4) the comprehensiveness of the evaluation; and (5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (Sept. 17, 2003).
5. Claimant submits the medical opinions of his treating psychiatrist, Dr. Batt, as well as the medical expert opinion of Dr. Halikias to establish the claim that he suffers from PTSD as a result of his August 2006 work injury. Dr. Mann disagrees. In his opinion, Claimant no longer suffers from PTSD and the psychological problems that led to his August 2007 suicide attempt are related to the dissolution of his third marriage.
6. The parties do not dispute that Claimant suffered a work-related physical injury when he caught his thumb in an industrial machine at work, and the experts agree that this event was indeed "traumatic." The dispute centers on whether Claimant's subsequent psychological impairment arose from the accident or from the dissolution of his third marriage.
7. All of the experts are well qualified. Dr. Batt had the longest treating relationship, and as a result was able to observe Claimant over a fifteen-month period. He was definite in his diagnosis of PTSD. Dr. Halikias was similarly definite in his diagnostic conclusions, commenting that Claimant presented clear, convincing and "robust" symptoms of PTSD.

8. Dr. Mazur, also a treating doctor in this claim, saw Claimant in the hospital immediately after his suicide attempt. Dr. Mazur himself stated that Claimant's insight was questionable and the records show that Claimant was confused at the time he was hospitalized. Dr. Mazur's reliance on Claimant's statements is questionable, therefore. For the same reasons, Dr. Mann's reliance on these reported statements in forming his opinions is suspect as well.
9. All of the evaluations were comprehensive. Dr. Mann did recite the history and records more thoroughly in his report than the other experts did, but that does not mean his conclusion is correct. He highlighted many of the positive things Claimant stated to him about his current social life and interests and relied on these statements as well as Dr. Mazur's conclusions regarding the reason for Claimant's suicide attempt. In doing so, however, he ignored Dr. Batt's conclusion that Claimant himself does not understand either the seriousness of his illness or the role that psychology could play in his recovery.
10. I am persuaded by the ordeal that Claimant went through regarding the severe injury to his thumb, the circumstances of that event, his isolating behaviors, nightmares and other psychological symptoms that Drs. Batt and Halikias were correct in their diagnosis of PTSD causally related to the August 2006 work injury. I am further convinced that Claimant's suicide attempt in August 2007 was precipitated by PTSD, not by depression over his divorce.
11. The final issue in dispute is Defendant's claim that the psychological injury is not compensable because Claimant's suicide attempt was willfully intended. Defendant claims that under 21 V.S.A. §649, compensation cannot be awarded for an injury that is caused by an employee's "willful intention to injure himself." In response, Claimant argues that his suicide attempt did not amount to a willful voluntary choice and therefore should not bar his right to workers' compensation benefits.
12. Claimant cites to *McKane v. Capital Hill Quarry Co.*, 100 Vt. 45 (1926), in support of his argument. The court in that case distinguished between a suicide that was a "voluntary, willful choice, with knowledge of the purpose and physical effect of the act," and one that resulted from "an uncontrollable impulse or in a delirium of frenzy." *Id.* at 47. The court found that a suicide that fit within the former category would not be compensable, but one that met the latter description would be. Applying that reasoning here, Claimant argues that his suicide attempt more properly fits the latter categorization.
13. This Department previously has noted that the continued viability of the court's reasoning in *McKane* is questionable given modern developments in both workers' compensation law and the study and treatment of mental illness. *Estate of Fatovich v. Burlington Free Press*, Opinion No. 19-97WC (July 29, 1997). The critical inquiry is not whether a suicide can be said to have been planned rather than impulsive. Rather, the key question is simply whether a subsequent injury – here, a suicide attempt – flowed naturally from the original compensable injury – here, Claimant's thumb injury and resulting PTSD. If it did, then it too should be found compensable. *See generally*, 2 *Larson's Workers' Compensation Law*, §§38.01-38.05 (stating that most jurisdictions have turned away from the type of analysis espoused in *McKane* in favor of the more modern causal connection analysis).

14. In *Fatovich* the Commissioner determined that the claimant's suicide was not compensable because it arose from an organically caused depression rather than from a work-related injury or condition. In contrast, in the current claim I have determined that the PTSD from which Claimant suffered as a result of his work-related thumb injury was what led to his suicide attempt. The causal connection has been established, from Claimant's thumb injury to his PTSD to his suicide attempt to his current mental state. The suicide attempt was not an intervening cause and does not bar Claimant from continuing workers' compensation coverage.
15. As Claimant has prevailed, he is entitled to an award of costs and attorney's fees pursuant to 21 V.S.A. §678. The invoice submitted by his attorney is unclear, however, as to the total amount requested. Claimant's attorney shall have thirty days from the date of this decision to resubmit his request.

ORDER:

Based on the foregoing findings of facts and conclusions of law, Claimant's claim for workers' compensation benefits is **GRANTED**. Defendant is hereby **ORDERED** to pay:

1. Temporary total disability benefits until Claimant either reaches an end medical result for his psychological injury or returns to work, whichever occurs first;
2. Medical benefits covering all reasonably necessary medical services and supplies causally related to Claimant's compensable psychological injury, including payment for the hospitalization and treatment following Claimant's suicide attempt;
3. Costs and attorney's fees in an amount to be determined in accordance with Conclusion of Law No. 15 above.

DATED at Montpelier, Vermont this 13th day of May 2009.

Patricia Moulton Powden
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.