Washington University Law Review

Volume 1975 | Issue 4

January 1975

Workmen's Compensation: Compensability of Psychological Disability Precipitated by Psychological Trauma, Wolfe v. Sibley, Lindsay & Curr Co., 330 N.E.2d 603 (1975)

WORKMEN'S COMPENSATION: COMPENSABILITY OF PSYCHOLOGICAL DISABILITY PRECIPITATED BY PSYCHOLOGICAL TRAUMA

Wolfe v. Sibley, Lindsay & Curr Co., 36 N.Y.2d 505, 330 N.E.2d 603, 369 N.Y.S.2d 637 (1975)

Claimant, respondents' employee, became mentally disabled after discovering the body of her immediate supervisor who had shot himself to death.[1] The Workmen's Compensation Board affirmed a referee's decision awarding benefits,[2] but the Supreme Court of New York, Appellate Division, reversed, holding that "mental injury solely from mental cause is not compensable."[3] The Court of Appeals of New York reversed and *held*: A psychological trauma arising out of and in the course of employment that causes psychological disability is an injury within the meaning of New York Workmen's Compensation Law.[4]

---

1. Claimant's immediate supervisor was before his suicide security director for respondent department store. His job placed great pressures upon him, especially during holiday seasons, which resulted in his becoming upset. This condition usually disappeared at the close of the holiday season. After the 1970 Christmas holiday, however, he remained nervous and agitated. As his condition deteriorated in the early part of 1971, he confided in claimant, expressing doubts about his ability to handle his job. Claimant assumed added responsibilities in an effort to ease her supervisor's burdens, and attempted to improve his morale.

On June 9, 1971, claimant received an inter-office call from her supervisor asking her to summon the police which she did. After attempting unsuccessfully to call back her supervisor, she went to his office where she found him "lying in a pool of blood caused by a self-inflicted gunshot wound in the head." Wolfe v. Sibley, Lindsay & Curr Co., 36 N.Y.2d 505, 507, 330 N.E.2d 603, 604, 369 N.Y.S.2d 637, 639 (1975).

Claimant's guilt about her failure to prevent the suicide developed into a condition diagnosed as an acute depressive reaction. She was hospitalized twice during 1971, receiving electroshock therapy and medication. She was unable to return to work until January 1972. *Id.* at 507-08, 330 N.E.2d at 604, 369 N.Y.S.2d at 638-39.

2. *Id.* at 508, 330 N.E.2d at 605, 369 N.Y.S.2d at 639.

3. Wolfe v. Sibley, Lindsay & Curr Co., 44 App. Div. 2d 739, 739, 354 N.Y.S.2d 470, 471 (1974).

4. Wolfe v. Sibley, Lindsay & Curr Co., 36 N.Y.2d 505, 510, 330 N.E.2d 603, 606, 369 N.Y.S.2d 637, 641 (1975). The majority opinion in *Wolfe* used six phrases interchangeably and without definition: "mental injury," "psychic trauma," "psychological injury," "nervous or psychological disorders," "psychic injury," "psychological or nervous injury." To avoid ambiguity, "trauma" or "impact" will be used to designate an occurrence (cause) that gives rise to a subsequent disability (effect). "Psychological" or "mental" will be used in contradistinction to "physical," although this distinction is

Workmen's compensation laws were first enacted after the turn of the century in response to an increase in industrial accidents and to the inadequacy of the tort remedies provided to injured employees by the common law.[5] These laws were intended to reimburse workers for a portion of their lost wages and medical expenses, provide rehabilitation for injured workers, and encourage employers to minimize occupational injury.[6] To implement these objectives workmen's

---

not as absolute as is often assumed. Thus, in *Wolfe*, claimant suffered a psychological trauma when she discovered the body of her supervisor. This resulted in (caused) a psychological disability (acute depressive reaction). If claimant had, for example, suffered a heart attack after finding the body or strained her back in an attempt to move it, her disability would be said to be "physical." For a discussion of the language problems in this area, see Render, *Mental Illness As An Industrial Accident*, 31 TENN. L. REV. 288 (1964).

5. 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 5.20 (1975) [hereinafter cited as LARSON]. The common law defenses available to employers sued for injuries by employees included the fellow-servant exception to respondeat superior liability, assumption of risk, and contributory negligence. *Id.* § 4.30. Professor Schneider estimates that under the common law system between 70 and 80 percent of disabilities caused by industrial or work accidents went uncompensated. 1 W. SCHNEIDER, WORKMEN'S COMPENSATION TEXT § 1 & n.4 (perm. ed. 1941) [hereinafter cited as SCHNEIDER TEXT]. On the history of workmen's compensation laws, see 1 SCHNEIDER, THE LAW OF WORKMEN'S COMPENSATION §§ 1-3 (2d ed. 1932) [hereinafter cited as SCHNEIDER]; SCHNEIDER TEXT §§ 9-10; 99 C.J.S. *Workmen's Compensation* § 5 (1958); NATIONAL COMM'N ON STATE WORKMEN'S COMPENSATION LAWS, COMPENDIUM ON WORKMEN'S COMPENSATION 11-19 (1973) [hereinafter cited as NATIONAL COMM'N COMPENDIUM]; WAGE AND LABOR STANDARDS ADMIN., U.S. DEP'T OF LABOR BULL. NO. 161, STATE WORKMEN'S COMPENSATION LAWS 1-2 (rev. ed. 1969). For a list of "Selected Legal Periodical Articles, Comments and Notes," see E. BLAIR, REFERENCE GUIDE TO WORKMEN'S COMPENSATION § 1:00 (1968).

6. Comment, *Workmen's Compensation Awards for Psychoneurotic Reactions*, 70 YALE L.J. 1129, 1130 (1961).

The National Commission on State Workmen's Compensation Laws' *Report* listed five basic objectives of a modern workmen's compensation program:

(1) Workmen's Compensation Should Provide Broad Coverage of Employees and Work-Related Injuries and Diseases
(2) Workmen's Compensation Should Provide Substantial Protection Against Interruption of Income
(3) Workmen's Compensation Should Provide Sufficient Medical Care and Rehabilitation Services
(4) Workmen's Compensation Should Encourage Safety
(5) There Should Be an Effective Delivery System for Workmen's Compensation

NATIONAL COMM'N ON STATE WORKMEN'S COMPENSATION LAWS, REPORT 35-39 (1972). *See also* 99 C.J.S. *Workmen's Compensation* § 5 (1958); 1 LARSON § 2.20; 1 SCHNEIDER § 1; 1 SCHNEIDER TEXT §§ 1-10; Larson, *Basic Concepts & Objectives of Workmen's Compensation*, in 1 SUPPLEMENTAL STUDIES FOR THE NATIONAL COMM'N ON STATE WORKMEN'S COMPENSATION LAWS 31-38 (1973); NATIONAL COMM'N COMPENDIUM 21-26.

compensation laws require employers, regardless of fault,[7] to compensate employees for injuries "arising out of and in the course of employment."[8] Most states, however, impose the limitation that the injury be accidental.[9]

Cases involving psychological trauma, psychological disability, or both present difficulties[10] in defining the scope of the term accidental

---

7. *See e.g.*, Colvert v. Industrial Comm'n, 21 Ariz. App. 409, —, 520 P.2d 322, 324 (1974); Ross v. Workmen's Comp. Appeals Bd., 21 Cal. App. 3d 949, 957, 99 Cal. Rptr. 79, 84 (1971); Frohlick Crane Serv., Inc. v. Mack, 182 Colo. 34, —, 510 P.2d 891, 893 (1973); Thomas v. Certified Refrigeration, Inc., 392 Mich. 623, 637 n.6, 221 N.W.2d 378, 385 n.6 (1974); Todd v. Goostree, 493 S.W.2d 411, 416 (Mo. Ct. App. 1973); White v. Atlantic City Press, 64 N.J. 128, 137, 313 A.2d 197, 202 (1973); Buhler v. Gossner, — Utah 2d —, —, 530 P.2d 803, 805 (1975); Montoya v. Greenway Aluminum Co., 10 Wash. App. 630, 633-34, 519 P.2d 22, 27 (1974).

8. N.Y. WORKMEN'S COMP. LAW § 10 (McKinney 1965). This language is used by nearly every state. *See, e.g.*, MO. ANN. STAT. § 287.120(1) (Vernon Supp. 1975); N.J. STAT. ANN. § 34:15-7 (1959). The phrase "arising out of . . . employment" refers to the causal relationship that must exist between injury and employment, while "in the course of employment" refers to the time, place, and circumstances under which the injury occurred. Illinois Country Club, Inc. v. Industrial Comm'n, 387 Ill. 484, 488, 56 N.E.2d 786, 788 (1944); A.C. Lawrence Leather Co. v. Barnhill, 249 Ky. 437, 442, 61 S.W.2d 1, 3 (1933); Rice v. Revere Copper & Brass, Inc., 186 Md. 561, 565, 48 A.2d 166, 167-68 (1945); Appleford v. Kimmel, 297 Mich. 8, 12, 296 N.W.2d 861, 862 (1941); Appleby v. Great Western Sugar Co., 176 Neb. 102, 106, 125 N.W.2d 103, 106 (1963); Crotty v. Driver Harris Co., 49 N.J. Super. 60, 69, 71, 139 A.2d 126, 131, 133 (Super. Ct. App. Div. 1958); Berry v. Colonial Furniture Co., 232 N.C. 303, 306, 60 S.E.2d 97, 100 (1950); Stanolind Pipe Line Co. v. Davis, 173 Okla. 190, 192, 47 P.2d 163, 164 (1935); Knox v. Batson, 217 Tenn. 620, 630, 399 S.W.2d 765, 770 (1966). For a discussion of the difficulties in applying this statutory language in cases in which psychological trauma or psychological disabilities are present, see Render, *supra* note 4. Render stated:

> The fact of the mental illness cases which makes the test difficult to apply is that rarely does a mental illness result from a single cause. More often than not it results from many causes, including basic defects in the employee's personality structure, and hence, it is arguable that mental illness is an ailment common to all mankind irrespective of the employer-employee relationship.

Id. at 297. *See also* Horovitz, *The Litigious Phrase: "Arising out of" Employment* (pts. 1-2), 3 NACCA L.J. 15, 4 *Id.* 19 (1949).

9. Only seven states do not require an "accidental" injury. *See* CAL. LABOR CODE § 3600 (Deering 1964); Almquist v. Shenandoah Nurseries, Inc., 218 Iowa 724, 254 N.W. 35 (1934); Crowley's Case, 287 Mass. 367, 191 N.E. 668 (1934); Mottonen v. Calumet & Hecla, Inc., 360 Mich. 659, 105 N.W.2d 33 (1960); Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200 (1960); Bishop v. Chauvin Spinning Co., 86 R.I. 435, 136 A.2d 616 (1957); Aetna Ins. Co. v. Hart, 315 S.W.2d 169 (Tex. Civ. App. 1958).

10. Significant problems arise in these cases because of the traditional view that mental illnesses are unreal or imaginary. As a consequence of this view, many courts

injury[11] and in proving a causal relationship between the work-related

attempt to prevent fraudulent claims by requiring a "physical" element as a basis for recovery.

> The impact of this pervasive preconception on compensation decisions can be briefly stated. A high proportion of the cases display a search for something—anything—that can be called "physical" to supply the element of "reality" in the injury.

Larson, *Mental and Nervous Injury in Workmen's Compensation,* 23 VAND. L. REV. 1243, 1243 (1970). The possibility of fraudulent claims is especially acute when a psychological trauma results in psychological disability.

> It is recognized that the difficulty of eliciting proof to establish causation may be the reason for denial of awards in "purely mental" cases. The persistent prerequisite that a *physical* factor be present on which to base an award is evidence that the courts indulge in this discrimination among labels to prevent recovery by malingerers. It is submitted, however, that mental illness and malingering are often equated in the minds of some, including judges.

Note, *Compensability of Mental Illness Under the Florida Workmen's Compensation Law,* 13 U. FLA. L. REV. 390, 391 (1960) (emphasis original). *See* Ferrara v. Galluchio, 5 N.Y.2d 16, 21, 152 N.E.2d 249, 252, 176 N.Y.S.2d 996, 999 (1958) (mental injury capable of clear medical proof). *But see* Millar v. Town of Newburgh, 43 App. Div. 2d 641, 642, 249 N.Y.S.2d 218, 220 (1973) (medical science cannot adequately distinguish between meritorious and fraudulent claims).

11. *See, e.g.,* Brady v. Royal Mfg. Co., 117 Ga. App. 312, 160 S.E.2d 424 (1968); Bekelski v. O.F. Neal Co., 141 Neb. 657, 4 N.W.2d 741 (1942).

In *Brady,* claimant became emotionally upset following a discussion with her employer about whether an absence was to be charged against her. Claimant's arm became paralyzed as a result of a conversion reaction. Doctors testified that there was no physical reason for the paralysis. The court held that she did not suffer an "injury" resulting from an "accident" as required by the Workmen's Compensation Act.

> While the result may not have been intended or expected, the occurrence out of which her condition arose . . . was in no way accidental. She was called in to the office for the discussion; the discussion proceeded between her and her superior in an apparently normal manner; and until that had ended nothing untoward happened.

117 Ga. App. at 314, 160 S.E.2d at 425.

In *Bekelski,* plaintiff, an elevator operator for defendant, was operating an elevator when a passenger was caught between the floor of the elevator and the second floor of the building. Plaintiff, who spent thirty minutes in the elevator with the dying passenger before help arrived, contended that the sight of the accident and her proximity to it caused injury to her nervous system, entitling her to compensation. Plaintiff was not physically injured, but the court found her to be totally disabled within the meaning of the workmen's compensation law. The court, however, denied her claim:

> Our statute defines an accident as follows: "The word 'accident' . . . shall . . . be construed to mean an unexpected or unforeseen event happening suddenly and violently . . . and producing at the time objective symptoms of an injury. The term 'injury' and 'personal injuries' shall mean only violence to the physical structure of the body . . ."

141 Neb. at 658, 4 N.W.2d at 742-43, *quoting* Law of April 21, 1913, ch. 198, § 52(b), [1913] Neb. Laws 601. The court stated that although there was clearly an "unexpected or unforeseen event happening suddenly and violently," there was no "violence to the physical structure of the body" since no physical injury was shown. *Id.* at 659, 661, 4 N.W.2d at 743-44.

trauma and the resulting disability.[12] Courts have almost uniformly held that psychological disabilities resulting from physical impacts fall within the meaning of accidental injury and are therefore compensable.[13] Similarly, most decisions have awarded compensation for physical disabilities resulting from psychological trauma.[14] Courts remain troubled, however, by the situation in which there is no physical element.[15] Nonetheless, an increasing number of jurisdictions have awarded compensation in this third situation.[16]

In Bailey v. American Gen. Ins. Co., 154 Tex. 430, 279 S.W.2d 315 (1955), however, the court held that a disabling neurosis (anxiety reaction) caused solely by psychological trauma was an injury within the meaning of Texas' workmen's compensation law. The statute defined "injury" or "personal injury" as "damage or harm to the physical structure of the body." *Id.* at 435, 279 S.W.2d at 318. The court stated:

> The phrase "physical structure of the body" . . . must refer to the *entire* body, not simply to the skeletal structure or to the circulatory system or to the digestive system. It refers to the whole, to the complex of perfectly integrated and interdependent bones, tissues and organs which function together by means of electrical, chemical and mechanical processes in a living, breathing fuctioning [*sic*] individual.
>
> . . . .
>
> The substance of all the testimony shows agreement that plaintiff's body no longer functions properly. Now, can we say that, as a matter of law, even though a "physical structure" no longer functions properly, it has suffered no "harm"? What meaning can the word "harm" to the body have if not that, as a result of the event or condition in question, the body has ceased to function properly?

Id. at 436, 279 S.W.2d at 318-19 (emphasis original).

12. The problem of causation is further complicated by the fact that mental disturbances can be more easily simulated than physical ailments. *See* Hanna, *Neurosis in Workmen's Compensation Cases*, 11 DEFENSE L.J. 189, 192-93 (1962). *See* note 10 *supra.*

13. 1A LARSON § 42.22 at 7-359 n.68. *See, e.g.*, Brown v. Northwest Airlines Inc., 444 P.2d 529 (Alas. 1968); Johnson v. Industrial Comm'n, 17 Ariz. App. 424, 498 P.2d 498 (1972); Sears, Roebuck & Co. v. Farley, — Del. —, 290 A.2d 639 (1972); Spetyla v. Industrial Comm'n, 59 Ill. 2d 1, 319 N.E.2d 40 (1974); Deines v. Greer, 216 Kan. 548, 532 P.2d 1257 (1975); Ricky Coal Co. v. Adams, 426 S.W.2d 464 (Ky. Ct. App. 1968); Harrell v. Delta Drilling Co., 251 So. 2d 97 (La. Ct. App. 1971); Boatwright v. ACF Indus., Inc., 463 S.W.2d 549 (Mo. Ct. App. 1971); Webb v. Hamilton, 78 N.M. 647, 436 P.2d 507 (1968); Trgo v. Harris Structural Steel Corp., 13 App. Div. 2d 856, 214 N.Y.S.2d 791 (1961).

14. 1A LARSON § 42.21. *See, e.g.*, Sturgill v. M & M, Inc., 329 A.2d 360 (Del. Sup. Ct. 1974); Charon's Case, 321 Mass. 694, 75 N.E.2d 511 (1947); Klein v. Len H. Darling Co., 217 Mich. 485, 187 N.W. 400 (1922); Geltman v. Reliable Linen & Supply Co., 128 N.J.L. 443, 25 A.2d 894 (Ct. Err. & App. 1942); Klimas v. Trans Caribbean Airway, Inc., 10 N.Y.2d 209, 176 N.E.2d 714, 219 N.Y.S.2d 14 (1961); Kinney v. State Indus. Accident Comm'n, 245 Or. 543, 423 P.2d 186 (1967). *Contra*, Liscio v. S. Makransky & Sons, 147 Pa. Super. 483, 24 A.2d 136 (1942).

15. 1A LARSON § 42.23.

16. *See* Butler v. District Parking Mgmt. Co., 363 F.2d 682 (D.C. Cir. 1966) (statutory presumption of coverage); American Nat'l Red Cross v. Hagen, 327 F.2d 559 (7th

New York Workmen's Compensation Law requires employers to provide compensation "for disability or death from injury arising out of and in the course of employment . . . ."[17] The statute defines injury as "accidental injury arising out of and in the course of employment,"[18] but fails to define accidental injury.[19] New York awards compensation

Cir. 1964) (same); Brock v. Industrial Comm'n, 15 Ariz. App. 95, 486 P.2d 207 (1971); McMillan v. Western Pac. R.R., 54 Cal. 2d 841, 357 P.2d 449, 9 Cal. Rptr. 361 (1960); Baker v. Workmen's Comp. Appeals Bd., 18 Cal. App. 3d 852, 96 Cal. Rptr. 279 (1961); Royal State Nat'l Ins. Co. v. Labor & Indus. Relations Appeal Bd., 53 Hawaii 32, 487 P.2d 278 (1971) (statutory presumption of coverage); Carter v. General Motors Corp., 361 Mich. 577, 106 N.W.2d 105 (1960); Todd v. Goostree, 493 S.W.2d 411 (Mo. Ct. App. 1973); Simon v. R.H.H. Steel Laundry, Inc., 25 N.J. Super. 50, 95 A.2d 446 (Hudson County Ct. Law Div.), *aff'd*, 26 N.J. Super. 598, 98 A.2d 604 (Super. Ct. App. Div. 1953); Kinney v. State Indus. Accident Comm'n, 245 Or. 543, 423 P.2d 186 (1967); Bailey v. American Gen. Ins. Co., 143 Tex. 430, 279 S.W.2d 315 (1955); Burlington Mills Corp. v. Hagood, 177 Va. 204, 13 S.E.2d 291 (1941); School Dist. No. 1 v. Department of Indus., Labor & Human Relations, 62 Wis. 2d 370, 215 N.W.2d 373 (1974); Yates v. South Kirkby, & C. Collieries [1910], 2 K.B. 538 (C.A.). *Contra*, Shope v. Industrial Comm'n, 17 Ariz. App. 23, 495 P.2d 148 (1972), *distinguishing* Brock v. Industrial Comm'n, *supra*; City Ice & Fuel Div. v. Smith, 56 So. 2d 329 (Fla. 1952); Brady v. Royal Mfg. Co., 117 Ga. App. 312, 160 S.E.2d 424 (1968); Jacobs v. Goodyear Tire & Rubber Co., 196 Kan. 613, 412 P.2d 986 (1966); Hackett v. Travelers Ins. Co., 195 So. 2d 758 (La. Ct. App.), *review denied*, 250 La. 634, 197 So. 2d 652 (1967); Bekelski v. O.F. Neal Co., 141 Neb. 657, 4 N.W.2d 741 (1942); Voss v. Prudential Ins. Co., 14 N.J. Misc. 791, 187 A. 334 (Dep't of Labor 1936).

17. N.Y. WORKMEN'S COMP. LAW § 10 (McKinney 1965):

> Every employer subject to this chapter shall . . . secure compensation to his employees and pay or provide compensation for their disability or death from injury arising out of and in the course of the employment without regard to fault as a cause of the injury, except that there shall be no liability for compensation under this chapter when the injury has been solely occasioned by intoxication of the injured employee while on duty or by wilful intention of the injured employee to bring about the injury or death of himself or another.

18. N.Y. WORKMEN'S COMP. LAW § 2-7 (McKinney 1965):

> "Injury" and "personal injury" mean only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom.

19. New York courts have defined the term. *See* Woodruff v. Howes Constr. Co., 228 N.Y. 276, 278, 127 N.E. 270, 270-71 (1920) ("takes place without one's foresight or expectation;" "not expected"); Deyo v. Village of Piermont, Inc., 283 App. Div. 67, 69, 126 N.Y.S.2d 523, 525 (1953) ("suddenness"); Broderick v. Liebmann Breweries, 277 App. Div. 422, 424, 100 N.Y.S.2d 837, 839 (1950) ("something extraordinary or catastrophic"). In Masse v. James H. Robinson Co., 301 N.Y. 34, 92 N.E.2d 56 (1950), the court stated:

> Whether a particular event was an industrial accident is to be determined, not by any legal definition, but by the common-sense viewpoint of the average man.

Id. at 37, 92 N.E.2d at 57.

benefits when physical impact produces psychological disability[20] and when psychological trauma produces physical disability.[21] In *Chernin v. Progress Service Co.*,[22] the appellate division refused to award compensation to a driver who developed a psychological disability after striking a pedestrian with his taxicab, holding that psychological disability caused by psychological trauma is noncompensable.[23] The court of appeals affirmed the decision on other grounds,[24] but expressly reserved the question whether "an occurrence arising out of and in the course of employment which causes psychological trauma may . . . be compensable even though there was no physical injury."[25] Subsequently, in *Straws v. Fail*,[26] the appellate division denied compensation to a porter who became psychologically disabled after a co-employee died in his arms. The appellate division relied on its own holding in *Chernin*, disregarding the reservation of the court of appeals.[27] The court of appeals denied claimant's motion for leave to appeal,[28] leaving the question unsettled.

---

20. *See, e.g.*, Griffiths v. Shaffrey, 308 N.Y. 729, 124 N.E.2d 339 (1954); Kalikoff v. John Lucas & Co., 297 N.Y. 663, 76 N.E.2d 324, *aff'g* 271 App. Div. 942, 67 N.Y.S.2d 153 (1947); Pokorny v. Chadbourne Wallace, Parkes & Whiteside, 14 App. Div. 2d 662, 219 N.Y.S.2d 130 (1961); Trgo v. Harris Structural Steel Corp., 13 App. Div. 2d 856, 214 N.Y.S.2d 791 (1961). For a list of decisions in other jurisdictions awarding benefits, see note 13 *supra*.

21. *See, e.g.*, Snyder v. New York State Comm'n for Human Rights, 31 N.Y.2d 284, 290 N.E.2d 821, 338 N.Y.S.2d 620 (1972); Eckhaus v. Adeck Stores, Inc., 11 N.Y.2d 862, 182 N.E.2d 287, 227 N.Y.S.2d 680 (1962); Klimas v. Trans Caribbean Airways, Inc., 10 N.Y.2d 209, 176 N.E.2d 714, 219 N.Y.S.2d 14 (1961); Masse v. James H. Robinson Co., 301 N.Y. 34, 92 N.E.2d 56 (1950); Pickerell v. Schumacher, 242 N.Y. 577, 152 N.E. 434 (1929); Weinstein v. Apex Dress Co., 31 App. Div. 2d 590, 295 N.Y.S.2d 2 (1968); Antonini v. Progressive Electronics, 15 App. Div. 2d 842, 224 N.Y.S.2d 481 (1962); Schwartz v. Hampton House Mgmt. Corp., 14 App. Div. 2d 936, 221 N.Y.S.2d 286 (1961); Pukaluk v. Insurance Co. of N. America, 7 App. Div. 2d 676, 179 N.Y.S.2d 173 (1958). *Contra*, Millar v. Town of Newburgh, 43 App. Div. 2d 641, 349 N.Y.S.2d 218 (1973). For a list of decisions in other jurisdictions, see note 14 *supra*.

22. 9 App. Div. 2d 170, 192 N.Y.S.2d 758 (1959).

23. *Id.* at 172, 192 N.Y.S.2d at 760.

24. The court of appeals memorandum stated that "the facts in this case do not warrant the finding that claimant suffered an accidental injury . . . within the provisions of the Workmen's Compensation Law." Chernin v. Progress Serv. Co., 9 N.Y.2d 880, 881, 175 N.E.2d 827, 827-28, 216 N.Y.S.2d 697, 698 (1961).

25. *Id.* at 881, 175 N.E.2d at 828, 216 N.Y.S.2d at 698.

26. 17 App. Div. 2d 998, 233 N.Y.S.2d 893 (1962).

27. *Id.* at 998, 233 N.Y.S.2d at 894. *See* text accompanying note 25 *supra*.

28. 12 N.Y.2d 647 (1963).

In *Wolfe v. Sibley, Lindsay & Curr Co.*[29] the court of appeals began its analysis by recognizing that workmen's compensation laws, as social legislation designed "to shift the risk of loss . . . from the worker to industry and ultimately [to] the consumer,"[30] should be construed liberally in favor of the employee.[31] After examining the New York cases,[32] the court announced that "psychological or nervous injury precipitated by psychic trauma is compensable to the same extent as physical injury."[33] The court emphasized two factors in reaching its position. First, an individual's physical and psychological makeup determines whether the disability will be physical or mental.[34] The court reasoned that recovery in a particular case should not depend upon whether an individual was more susceptible to mental than physical injury.[35] Second, the court believed that since it had recognized both "the reliability of identifying psychic trauma as a causative factor of injury"[36] and "the reliability [of] identifying psychological injury as a resultant

29. 36 N.Y.2d 505, 330 N.E.2d 603, 369 N.Y.S.2d 637 (1975).

30. *Id.* at 509, 330 N.E.2d at 605, 369 N.Y.S.2d at 640.

31. *Id.* One commentator has suggested that although workmen's compensation laws "should be and are interpreted liberally . . . legislative intentions should not be disregarded in the name of liberal construction." E. BLAIR, *supra* note 5 at § 1:00.

32. The court specifically took note of Snyder v. New York State Comm'n For Human Rights, 31 N.Y.2d 284, 290 N.E.2d 821, 338 N.Y.S.2d 620 (1972); Eckhaus v. Adeck Stores, Inc., 11 N.Y.2d 862, 182 N.E.2d 287, 227 N.Y.S.2d 680 (1962); Battala v. State, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.2d 34 (1961); Klimas v. Trans Carribbean Airways, Inc., 10 N.Y.2d 209, 176 N.E.2d 714, 219 N.Y.S.2d 14 (1961); Griffiths v. Shaffrey, 308 N.Y. 729, 124 N.E.2d 333 (1954); Kalikoff v. John Lucas & Co., Inc., 297 N.Y. 663, 76 N.E.2d 324, *aff'g* 271 App. Div. 942, 67 N.Y.S.2d 153 (1947); Pickerell v. Schumacher, 242 N.Y. 577, 152 N.E. 434 (1926); Heitz v. Ruppert, 218 N.Y. 148, 112 N.E. 750 (1916); Straws v. Fail, 17 App. Div. 2d 998, 233 N.Y.S.2d 893 (1962), *motion for leave to appeal denied*, 12 N.Y.2d 647 (1963); Chernin v. Progress Serv. Co., 9 App. Div. 2d 170, 192 N.Y.S.2d 758 (1959), *aff'd on other grounds*, 9 N.Y. 2d 880, 175 N.E.2d 827, 216 N.Y.S.2d 697 (1961).

33. Wolfe v. Sibley, Lindsay & Curr Co., 36 N.Y.2d 505, 511, 330 N.E.2d 603, 606, 369 N.Y.S.2d 637, 641 (1975). It should be noted that the parties agreed that the psychological trauma caused claimant's psychological disability. *Id.* at 509, 330 N.E.2d at 605, 369 N.Y.S.2d at 640. Therefore, the controversy over the ability of medical proof to establish causation, *see* note 10 *supra*, was removed.

34. *Id.* at 510, 330 N.E.2d at 606, 369 N.Y.S.2d at 641.

35. *Id.* Writing for the majority, Judge Wachtler stated:

> In a given situation one person may be susceptible to a heart attack while another may suffer a depressive reaction. In either case the result is the same—the individual is incapable of functioning properly because of an accident and should be compensated . . . .

Id.

36. *Id.* *See* cases cited note 21 *supra.*

factor,"[37] there was no longer any reason for denying recovery when both trauma and injury were psychological.[38]

The court rejected respondents' contention that if compensation were awarded when mental disability resulted from witnessing physical injury to another, there would be no reasonable way to limit the scope of an employer's liability.[39] Respondents relied upon *Tobin v. Grossman*,[40] in which an extension of tort liability for injury to a witness was refused.[41] The *Wolfe* court pointed out that workmen's compensation laws reject the traditional tort concept of foreseeability.[42] The court reasoned that the claimant was intensely involved in the circumstances surrounding her supervisor's suicide, and concluded that recovery should be allowed since "the claimant was an *active participant* in the tragedy."[43]

In dissent, Chief Judge Breitel emphasized the "passive and 'unconnected' status of the claimant to the accident or event which evoked her symptoms."[44] He argued that although it would be proper to award compensation for psychological disability caused by psychological trauma to one "who has been the object or subject of an occupational accident or event,"[45] it would expose employers to limitless liability to

37. *Id.* at 510, 330 N.E.2d at 606, 369 N.Y.S.2d at 642. *See* cases cited note 20 *supra.*

38. 36 N.Y.2d at 510, 330 N.E.2d at 606, 369 N.Y.S.2d at 642.

39. Brief for Respondents at 7-10, Wolfe v. Sibley, Lindsay & Curr Co., 36 N.Y.2d 505, 330 N.E.2d 603, 369 N.Y.S.2d 637 (1975).

40. 24 N.Y.2d 609, 249 N.E.2d 419, 301 N.Y.S.2d 554 (1969).

41. *Id.* In *Tobin*, the court of appeals denied recovery to a mother whose child had been struck by defendant's negligently driven automobile. The mother sought to recover in tort for her own mental and physical injuries which developed after she witnessed the accident. In denying recovery Chief Judge Breitel emphasized the problems of limiting liability if recovery were allowed:

> The problem of unlimited liability is suggested by the unforeseeable consequence of extending recovery for harm to others than those directly involved in the accident. If foreseeability be the sole test, then once liability is extended the logic of the principles would not and could not remain confined.

Id. at 616, 249 N.E.2d at 423, 301 N.Y.S.2d at 559.

42. Wolfe v. Sibley, Lindsay & Curr Co., 36 N.Y.2d 505, 511, 330 N.E.2d 603, 607, 369 N.Y.S.2d 637, 642 (1975).

43. *Id.* *See* notes 52-56 *infra* and accompanying text.

44. *Id.* at 513, 330 N.E.2d at 607, 369 N.Y.S.2d at 643 (emphasis added).

45. *Id.* at 514, 330 N.E.2d at 608, 369 N.Y.S.2d at 644. Chief Judge Breitel stated:

> Thus, one could agree with the truly vigorous dissent by Judge Dye in *Matter of Chernin v. Progress Serv. Co.* . . . and yet disagree with the majority in

award benefits to an individual who merely observes another person's injury.[46] He warned that, considering the high costs of psychiatric care, to permit recovery by "mere onlookers" might overburden the workmen's compensation system.[47]

The *Wolfe* opinion is commendable for recognizing the inconsistency of allowing recovery in cases in which psychological trauma causes physical disability but denying recovery when a similar trauma causes psychological disability.[48] The court properly rejected the historical equation of mental with "unreal" or "imaginary," while correctly recognizing that the developing sophistication of psychiatry has reduced the difficulty of determining whether a psychological trauma is the cause-in-fact of a psychological disability.[49] The court's acceptance of the view that psychological disability may constitute an accidental injury[50] freed it to proceed to the key issue of whether the injury was sufficiently work-related to warrant imposing liability on the employer.[51]

---

this case. The claimant in the *Chernin* case was the actor in and the "cause" of the unsettling accident. The claimant in this case would be comparable if somehow her conduct "caused" her superior's suicide.

Id. at 513, 330 N.E.2d at 607-08, 369 N.Y.S.2d at 643.

46. *Id.* at 514, 330 N.E.2d at 608, 369 N.Y.S.2d at 644. The dissent reasoned:

> The manifold ramifications of possible psychic trauma to the preconditioned from the impact of events and accidents that occur to other [sic] is unlimited, and the lines to be drawn between those proximate or remote to the event or accident are indiscernible on any rational or practical basis.

Id. at 513, 330 N.E.2d at 607, 369 N.Y.S.2d at 643 (citations omitted).

47. *Id.* at 514, 330 N.E.2d at 608, 369 N.Y.S.2d at 644.

48. *Id.* *See* 1A LARSON § 42.23, at 7-378-79. *See also* Indemnity Ins. Co. v. Loftis, 103 Ga. App. 749, 751, 120 S.E.2d 655, 656 (1961); Larson, *supra* note 10, at 1253; Comment, *Mental Stress and Mental Injury in New York Workmen's Compensation*, 16 BUFFALO L. REV. 727, 738-39 (1967); 35 NOTRE DAME LAW. 471, 473 (1960).

49. *See* note 10 *supra*. *See also* W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 54, at 328 (4th ed. 1971) (footnotes omitted):

> [T]he only valid objection against recovery for mental injury is the danger of vexatious suits and fictitious claims . . . . The danger is a real one, and must be met. Mental disturbance is easily simulated, and courts which are plagued with fraudulent personal injury claims may well be unwilling to open the door to an even more dubious field. But the difficulty is not insuperable. Not only fright and shock, but other kinds of mental injury are marked by definite physical symptoms, which are capable of clear medical proof. It is entirely possible to allow recovery only upon satisfactory evidence . . . .

Id. at 212. *But see* Millar v. Town of Newburgh, 43 App. Div. 2d 641, 349 N.Y.S.2d 218 (1973):

> And to those who reply that it is only where medical proof as to such connection that an award will be proper are blind as to how easily some medical "evidence" seems to be able to be produced in these cases . . . .

Id. at 642, 349 N.Y.S.2d at 220.

50. *See* note 33 *supra* and accompanying text.

51. *See* note 8 *supra* and accompanying text. Because workmen's compensation

Unfortunately, rather than providing a critical analysis of the relationship between claimant's employment and the psychological trauma that led to her disability, the court offered only the undefined active participant concept.[52] Despite Judge Wachtler's statement that "Mrs. Wolfe was *not a third party* merely witnessing injury to another,"[53] the court implicitly expanded an employers' liability to include injuries to *some* third parties—those who can be considered active participants.[54] It is difficult to predict whether this expansion of liability will be significant since the court failed to delineate the circumstances in which an individual's participation will be viewed as active or passive.[55] In-

---

laws are of statutory origin, it is arguable that all limits on recovery should be found in the language of the statute in question. Having decided that mental disability caused by psychological trauma may be compensable in some cases, the *Wolfe* court should have decided whether Mrs. Wolfe's injury could be viewed as one "arising out of . . . employment." Unfortunately, the majority did not take this approach. *See* text accompanying notes 52-56 *infra*.

52. In support of its conclusion that claimant was an "*active participant* in the tragedy," the majority opinion provided the following explanation:

> [Her supervisor's] nervous condition had intensely involved her, to the point of her being required to assume his responsibilities and attempting to comfort him. Not only did she consider his suicide a personal failure but she was an integral part of the tragedy by virtue of his last communication and her discovery of his lifeless body. The feeling on her part that she should have been able to foresee and to prevent the tragedy was undoubtedly a competent producing cause of her incapacitation.

Wolfe v. Sibley, Lindsay & Curr Co., 36 N.Y.2d 505, 512, 330 N.E.2d 603, 607, 369 N.Y.S.2d 637, 642 (1975). These situation-specific facts offer little in the way of a general standard to guide courts in applying the active participant requirement.

53. *Id.* at 511, 330 N.E.2d at 606, 369 N.Y.S.2d at 642 (emphasis added).

54. Commenting on *Wolfe*, one writer has argued that the court avoided the third-party question "by holding that *as a matter of fact* the claimant was not a 'third party,' but was an 'active participant.'" 44 FORDHAM L. REV. 204, 212 n.67 (1975) (emphasis original). The problem with this reading of the case is that the majority opinion never stated whether the active participant language should be read as a finding of fact or conclusion of law. Indeed, the majority opinion provides little or no guidance for interpreting and applying the active participant concept. *See* note 52 *supra* and accompanying text. Given this deficiency, it is difficult to disagree with Chief Judge Breitel's view that Mrs. Wolfe was a third party. *See* 36 N.Y. at 512-14, 330 N.E.2d at 607-08, 369 N.Y.S.2d at 643-44.

55. It is difficult to ascertain how the *Wolfe* court would deal with slightly varied fact situations. Presumably, a janitor who developed a psychological disability after discovering the body of an employee he did not know would be denied recovery. This conclusion follows from the heavy emphasis of the *Wolfe* court on the close relationship between Mrs. Wolfe and her supervisor. But would the court have considered her an active participant if she had not been so emotionally involved with her supervisor? Would the court have allowed Mrs. Wolfe to recover if she had been home when informed of the suicide? Had the suicide occurred in full view of a large number of co-

stead, the court announced a case-by-case approach to the question whether a given claimant is an active participant.[56]

Another weakness in both the majority and dissenting opinions was their failure to discuss the effects an award of workmen's compensation benefits might have upon a claimant afflicted with a psychological disability. Several commentators have suggested that awarding compensation in such circumstances may adversely affect rehabilitation.[57] If

---

employees, and several had developed psychological disabilities, would compensation have been allowed?

Other workmen's compensation cases have not dealt with this limitation of liability question. Several torts cases, however, have considered the problem. These tort cases have involved the issue of permitting a parent, who witnesses his child's being struck by a negligently driven automobile, to recover for his own mental and physical injuries. In general, courts have denied recovery in such cases, on the theory that "the defendant could not reasonably anticipate any harm to the plaintiff, and therefore owes her no duty of care." PROSSER, *supra* note 49, at 333. Some courts, however, have held to the contrary. In Dillon v. Legg, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968), the court reasoned that since duty "is inherently intertwined with foreseeability such duty or obligation must necessarily be adjudicated only upon a case-by-case basis." *Id.* at 740, 441 P.2d at 920, 69 Cal. Rptr. at 80. The court proceeded to list three factors to be considered in determining whether defendant owes plaintiff a duty of due care:

> (1) Whether plaintiff was located near the scene of the accident as contrasted with one who was a distance away from it.
> (2) Whether the shock resulted from a direct emotional impact upon plaintiff from the sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence.
> (3) Whether plaintiff and the victim were closely related, as contrasted with an absence of any relationship or the presence of only a distant relationship.

Id. at 740-41, 441 P.2d at 920, 69 Cal. Rptr. at 80. Discussing these factors, Professor Prosser stated:

> Admittedly such restrictions are quite arbitrary, have no reason in themselves, and would be imposed only in order to draw a line somewhere short of undue liability; but they may be necessary in order not to "leave the liability of a negligent defendant open to undue extension by the verdict of sympathetic juries who under our system must define and apply any general rule to the facts of the case before them."

PROSSER, *supra* note 49, at 335, *quoting* Bohlen, *Fifty Years of Torts*, 50 HARV. L. REV. 725, 735 (1937). Perhaps the *Wolfe* court meant to embody such factors within the "active participant" language. *See* note 52 *supra*. But given the objectives of workmen's compensation laws, *see* note 6 *supra* and accompanying text, and the absence of juries in workmen's compensation cases, the justification for imposing such arbitrary restrictions would seem inapplicable to workmen's compensation cases. *See* note 51 *supra*.

56. The majority opinion states, "This is not to say that liability should be extended indefinitely, we must consider the record before us in light of the commonsense viewpoint of the average man . . . ." Wolfe v. Sibley, Lindsay & Curr Co., 36 N.Y.2d 505, 511, 330 N.E.2d 603, 607, 369 N.Y.S.2d 637, 642 (1975) (citation omitted). *See also* 40 FORDHAM L. REV. 204, 213 (1975).

57. *See, e.g.*, Hanna, *supra* note 12. Hanna argued that awarding compensation

these commentators are correct, the *Wolfe* decision ironically appears to harm those persons that it intended to assist.[58]

Despite its shortcomings, the *Wolfe* decision is likely to be favorably received.[59] The case reflects a more realistic view of the character and causes of psychological disability than prior New York cases. It remains to be seen whether subsequent decisions will fashion the active participant language into a functional concept for limiting the scope of employers' liability or discard the concept altogether.

---

to a claimant suffering from a psychological disability serves only to "foster" the disability:

> Whatever the recovery, in most cases there has been no real benefit to anyone. The employer has been forced to compensate a highly-questionable claim. The employee, if a malingerer, or gross exaggerator, has experienced success in the perpetration of a fraud. If he is merely fooling himself . . . the award nevertheless confers upon him a certificate of disability which will confirm in his mind the fact that he is disqualified, largely or altogether, from having in future [*sic*] to provide the earnings which formerly he supplied for his family.

Id. at 202. *See also* Comment, *supra* note 6, at 1147-50 & nn.130-42.

58. *See* note 6 *supra* and accompanying text.

59. Professor Larson, for example, commenting on the *Chernin* and *Straws* decisions, *see* text accompanying notes 22-28 *supra*, criticized New York's failure to take a "simple step into the twentieth century." 1A LARSON § 42.23, at 7-379.