

**STATE OF VERMONT  
DEPARTMENT OF LABOR & INDUSTRY**

Linda M. Gaboriau	)	Opinion No. 35-05WC
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
Harbour Industries, Inc.	)	
	)	For: Laura Kilmer Collins
	)	Commissioner
	)	
	)	State File No. S-04608

Hearing held at Burlington, Vermont, on May 13, 2005

Record closed on May 27, 2005

**APPEARANCES:**

Linda Gaboriau, *pro se*  
Corina N. Schaffner, Esq., for the defendant

**ISSUES:**

1. Is claimant entitled to further benefits for physical and/or psychological injuries suffered from a work-related injury?
2. Does a causal connection exist between the psychological injury claimed and the work-related accident?

**CLAIM:**

1. Permanent partial disability compensation pursuant to 21 V.S.A. § 648;
2. Medical and hospital benefits for both physical and psychological injuries pursuant to 21 V.S.A. § 640; and
3. Vocational rehabilitation pursuant to 21 V.S.A. § 641

## **EXHIBITS:**

### **Joint Exhibits:**

1. Fletcher Allen Health Care, Medical Records of Claimant
2. Vermont Occupational & Acute Care, Medical Records of Claimant
3. Green Mountain Physical and Occupational Medicine, Medical Records of Claimant
4. Northwestern Medical Center, Medical Records of Claimant
5. Milton Family Practice, Medical Records of Claimant
6. University Disability Consortium, Medical Records of Claimant
7. All Departmental Forms and Agreements, including correspondence to and from the Department

### **Claimant's Exhibits:**

1. April 19, 2005 Letter from Kim Hageman, M.D.
2. May 3, 2005 Letter from Louise George, M.S.
3. Center for Pain Medicine, Patient Instructions
4. November 19, 2003 Patient Notes from Jon Porter, M.D.
5. December 3, 2003 Department of Motor Vehicles, Medical Evaluation by Jon Porter, M.D.

### **Defendant's Exhibits:**

1. February 5, 2002 Department of Labor & Industry, Vocational Rehabilitation Entitlement Assessment
2. February 6, 2002 Letter from Joyce Colby, Travelers Insurance Claim Representative
3. February 20, 2002 Form 22
4. Letter from Julia Heath
5. Packet of Correspondence
6. Brian Mercer, M.D., Curriculum Vitae
7. Melvyn Lurie, M.D., Curriculum Vitae

## **FINDINGS OF FACTS:**

1. Harbour Industries, Inc. (Defendant) was an employer as defined by the Vermont Workers' Compensation Act at all relevant times. Linda Gaboriau (Claimant), was an employee as defined by the Vermont Workers' Compensation Act at all relevant times.
2. Constitution State Service Company (Constitution) was the workers' compensation carrier for Defendant at the time of the injury at issue in this case.
3. Claimant is a 45 year-old female, who was employed by Defendant as a low loss operator at the time of the injury. Claimant worked for Defendant for approximately four and one

half years. She worked as a machine operator for approximately two years before being injured.

4. Claimant was initially injured while working for Defendant on August 27, 2001. She injured her back while operating machinery. Claimant returned to work, but was diagnosed as only being capable of sedentary level work. In November of 2001, Defendant laid her off.
5. On October 18, 2001, Jon Fenton, M.D. made an initial examination of claimant. He opined that claimant suffered a status post lumbar strain and had a plan to rule out radiculopathy. He recommended physical therapy and a behavioral evaluation.
6. On October 30, 2001, Dr. Fenton noted that pain behaviors exceeded the physical findings. He opined that before any further physical treatment is done, a behavioral medicine evaluation should be completed.
7. On December 5, 2001, Dr. Fenton noted in a progress report that claimant reported being 50% improved and she no longer had any sharp pains.
8. During physical therapy, Claimant improved her lifting ability and flexibility. On January 23, 2002, claimant was discharged from physical therapy and deemed by Dr. Fenton capable of light to medium work. On the same day, Dr. Fenton gave her a 5% whole person impairment rating. He noted in his impairment rating discussion that there is nothing further to offer claimant for medical or rehabilitative care.
9. On February 20, 2002, claimant returned to Dr. Fenton's office claiming she re-injured her back while lifting a keg at a new job interview. Dr. Fenton opined that the injury was a recurrence and not an aggravation. He recommended two to four more sessions of physical therapy and discharged her again on March 8, 2002. On this date she was again cleared for light to medium work capacity.
10. At Dr. Fenton's request, claimant began cognitive therapy with Laurence Thompson, M.S., a psychologist, in December of 2001, and it lasted through January of 2002. In therapy, Mr. Thompson helped her with coping with stress and teaching her how stress relates to pain. By December 17, 2001, Mr. Thompson reported that claimant was very positive about progress and felt optimistic about her ability to maintain progress.
11. In February of 2002, an entitlement assessment denied claimant vocational rehabilitation. Claimant was sent a copy of the assessment in the mail.
12. Also, on February 20, 2002, the Commissioner approved a Form 22 agreement between the two parties. This permanent partial disability agreement provided for payments by Constitution for a period of 27.50 weeks.

13. In June of 2002, claimant attempted to go back to work by applying for temp work at ADECCO. She trained for three days, but was taken off the job when she complained of back pain. ADECCO wanted a more specific doctor's note in order to place claimant in an appropriate job. Claimant claims she requested a doctor's note from Dr. Fenton, but did not receive one. She did not return to ADECCO.
14. There are no further medical records until February 11, 2003, when claimant returned to Dr. Fenton for an evaluation. She stated she had worsening problems in the lower back, gluteus and left leg. There were no precipitating events or intervening injuries. Dr. Fenton diagnosed her with pain amplification and myofascial pain. He doubted that she was experiencing radiculopathy. Dr. Fenton referred her to Northwestern Medical Center for an epidural injection and recommended post-epidural physical therapy. Claimant testified that the injection therapy at Northwestern Medical Center did not help.
15. On April 18, 2003, Dr. Fenton found no neurological findings from the most recent examination of claimant. The only findings were musculoskeletal, as in prior exams. He again opined that her pain was a recurrence and not a new injury or aggravation.
16. On March 10, 2003, claimant started going to Fletcher Allen Health Care for a second opinion. Patricia Whitney, M.D. undertook a medical examination and found no direct tenderness. Dr. Whitney again examined claimant on May 23, 2003 and opined that etiology is still unclear. She referred claimant to Stanley Grzyb, M.D. at the Spine Institute for an evaluation of her back pain.
17. Dr. Grzyb initially evaluated claimant on May 15, 2003. There was diffuse pain and there was no evidence of spasm. Dr. Grzyb could not determine the etiology of her ongoing discomfort. He did undertake an MRI scan on claimant in an attempt to discover the cause of her discomfort. The MRI came back negative for any findings except for two cysts that were on the right and left of her spine. Dr. Grzyb opined that these were incidental findings and would not explain claimant's symptoms. Further, in a letter dated July 1, 2003, Dr. Grzyb indicated that surgery or injection therapy would not be a benefit to the claimant.
18. On August 20, 2003, Timothy Fries, M.D. performed an EMG on claimant. The EMG was normal.
19. On September 3, 2003, Jon Porter, M.D. evaluated claimant and noted that she had back pain with left leg numbness which was intermittent, and that neither Dr. Grzyb nor himself were able to come up with an underlying etiology. As a result, the claimant was referred to neurology.
20. On January 9, 2004, claimant again saw Dr. Porter for an examination. He believed depression is playing a significant role as a co-morbid factor in her illness. On March 10, 2004 an MRI of her cervical spine showed insignificant findings.

21. On March 17, 2004, John Ferguson, M.D. initially examined claimant. In his report Dr. Ferguson stated that claimant was a complex and confusing patient and he was waiting for further clarification. He opined that the cause of claimant's condition was unknown. Dr. Ferguson examined claimant again on May 11, 2004. He concluded after this examination that claimant could work a sitting job without lifting for up to four hours a day with frequent breaks throughout. On May 27, 2004, Dr. Ferguson examined claimant again and opined that symptoms are consistent with chronic regional pain syndrome (CRPS).
22. On May 21, 2004, claimant saw Rup Tandan, M.D., who ordered ulnar nerve tests. The ulnar nerve tests were conducted on June 11, 2004, and the results were entirely normal throughout.
23. On September 7, 2004, Hrayr Attarian, M.D., a neurologist, concluded that the extensive examination that had been conducted failed to show any objective evidence of a neuropathic process. Dr. Attarian was convinced that CRPS was not claimant's problem, considering the absence of physical examination findings seen with the disorder. The only neuropathy he found was related to the alcohol and tobacco abuse, but he did not feel that this was a significant contributing factor. Dr. Attarian felt that the pain might be musculoskeletal.
24. In September of 2004, claimant was prescribed a muscle stimulator for her back pain. Claimant testified that it admittedly did not appear to help her pain, but she missed it once it was returned.
25. On March 16, 2005, Brian A Erickson, M.D., a psychiatrist at Fletcher Allen Health Care, diagnosed claimant with pain disorder psychological factors, medical condition, history of depressive disorder, and myofascial pain uncertain etiology for back pain. Dr. Erickson was the only psychiatrist, other than Dr. Lurie, who examined.

### **Expert Opinions**

26. Louise George, M.S., is a social worker, who worked with claimant from 2003 through 2005.
27. Ms. George noted claimant's personal history in August of 2003. Claimant's first husband was a drug abuser, whom she divorced in the mid 1980's. He later hanged himself in drug rehab. Her younger brother died a few years later of muscular dystrophy. After her brother's death, her boyfriend, whom she was living with and very close with, died of cancer. Claimant was seeing a gentleman she worked with for several months at the time of her injury. However, on October 12, 2001, claimant's birthday, he told her he was too busy for her birthday and the relationship ended.

28. Claimant strenuously denied the relevance of anything related to her relationships or any of her prior issues. She vigorously claims that she was never depressed prior to the 2001 accident at work, and it is noted that she never was diagnosed with depression prior to 2001.
29. In her notes, Ms. George recorded a fluctuation of levels of depression, often dependent on family and social interaction. Ms. George noted that claimant's symptoms of depression were less severe during periods spent interacting with family and friends. When claimant's mom was in town, she was less depressed. The holidays led to less depression, as family and friends often surrounded claimant. Ms. George also reported that claimant expressed anger and frustration with regards to her financial situation and her lack of answers pertaining to her medical condition. Ms. George noted that when claimant stayed busy with her family and friends, she was less depressed. Ms. George stated that family time distracted her from her medical condition.
30. In September of 2004, Ms. George reported that claimant was depressed because of her foster sister's illness. However, again, claimant became less depressed, as she spent time with family over Thanksgiving and Christmas. Claimant was even noted as being excited about planning a vacation with her father. Early in 2005, Ms. George stated that claimant felt isolated, but not overly depressed and expressed interest in dating. On March 8, 2005, Ms. George reported in her notes that claimant had been more social, which helps her depression.
31. Dr. Hageman is a general practitioner working at Milton Family Practice, who has treated claimant since 2004.
32. On February 15, 2005, Dr. Hageman stated that claimant had chronic low back pain that was originally from the work-related injury. Dr. Hageman also stated that CRPS had been ruled out by neurology and concluded that there are no new options to relieve her pain.
33. On April 19, 2005, Dr. Hageman opined in a letter that claimant's chronic lower back pain resulted in chronic depression. It was her opinion that the work-related injury caused her depression and that regular counseling would be helpful.
34. In the beginning of April of 2005, Melvyn Lurie, M.D., and Brian Mercer, M.D., both from University Disability Consortium, examined claimant in Boston at the request of Defendant. Dr. Lurie is an experienced psychiatrist, who examined the entire medical records exhibits.

35. Dr. Lurie testified that claimant suffers from a somatoform disorder that did not arise out of the work injury, but rather stemmed from a pre-existing somatoform disorder. Dr. Lurie opined that a pattern of somatoform disorder was established in 1992, when claimant admitted to suffering from back pain and grief counseling. He testified that the somatoform disorder was triggered again by the breakup with claimant's boyfriend on her birthday in October of 2001. In his in-depth analysis, Dr. Lurie stated that the claimant's complaints derive from psychosocial stressors in her life. He goes on to conclude that these are the causes of her complaints, both psychological and physical.
36. Dr. Lurie further testified it is a typical part of somatoform disorder syndrome that the patient fails to recognize or refuses to recognize the relevance of triggering factors and/or stresses. He stated that although claimant is convinced that the accident at work is the cause of her complaints, it is instead the psychosocial stressors in her life. Additionally, Dr. Lurie testified that claimant's depression was mild, as she exhibited atypical enjoyment of family and friends and looked forward to family events, which is not consistent with depression. Dr. Lurie noted as well, that the development of relationships were uncharacteristic of depression.
37. Dr. Mercer is an experienced neurologist, who examined the entire medical records exhibits.
38. Dr. Mercer testified that claimant sustained a soft tissue injury of a thoracic/lumbar sprain, which was caused by the work injury on August 27, 2001. He noted in his in-depth evaluation that no organic etiology for her symptoms could be found, despite extensive evaluations. He opined that sensory examination does not follow any known physiologic distribution and the decreased pinprick sensation does not follow a physiologic distribution. Dr. Mercer also noted that the variability of reporting of vibratory sensation on the left toe is also a non-physiologic finding.
39. The only physician who tested the claimant for Wadell signs was Dr. Mercer. Wadell signs are used to detect pain complaints when there should be none. If Wadell signs are positive, it is evidence of a non-organic basis of the complaint. Dr. Mercer's examination demonstrated four of the five Wadell signs. Dr. Mercer testified that although pain can be organic and no cause for it found, you would not have Wadell signs where there was an organic basis. The Wadell signs would be negative in those cases.
40. Dr. Mercer testified that he felt that ongoing medical treatment for claimant was neither reasonable nor necessary given her presentation of a non-organic basis. It was his conclusion that in the absence of objective findings, no causal relationship to her work injury could be established.

## CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks*, 123 Vt. 161 (1962). The claimant must establish by sufficient credible evidence the character and extent of the injury and disability as well as the causal connection between the injury and the employment. *Egbert v. Book Press*, 144 Vt. 367 (1984).
2. There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941).
3. Where the causal connection between an accident and an injury is obscure, and a layperson would have no well-grounded opinion as to causation, expert medical testimony is necessary. *Lapan v. Berno's Inc.*, 137 Vt. 393 (1979).
4. To establish a physical-mental claim, a claimant must prove a causal nexus between a compensable physical injury and psychological impairment. See *Blais v. Church of Jesus Christ of the Latter Day Saints*, Opinion No. 30-99WC (Sept. 28 & July 30, 1999). When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional conduct. *Pelkey v. Chittenden County Sheriff's Dept.*, Opinion No. 24-02WC (2002); See also 1 Larson, *The Law Of Workmen's Compensation*, § 10.01.
5. In considering conflicting expert opinions, this Department has traditionally examined the following criteria: 1) the length of time the physician has provided care to the claimant; 2) the physician's qualifications, including the degree of professional training and experience; 3) the objective support for the opinion; and 4) the comprehensiveness of the respective examinations, including whether the expert had all relevant records. *Miller v. Cornwall Orchards*, Op. No. WC 20-97 (1997); *Gardner v. Grand Union*, Op. No. 24-97WC (1997).

### Physical Injury Conclusions

6. Claimant seeks reimbursement for past and future medical expenses for the physical injury incurred as a result of her work-related injury.
7. Within six months of the initial injury, claimant reached Medical End Result. Dr. Fenton opined this in January of 2002 and gave claimant a 5% whole person impairment rating. Dr. Mercer concurred that most soft tissue injuries similar to that of claimant's injury are resolved within three months and virtually all by six months.



8. Claimant's actions do not show objective evidence of a deteriorating condition. From the time of Dr. Fenton's discharge from physical therapy in March 2002, until February of 2003, when claimant returned to Dr. Fenton on her own initiative, there was no record of medical treatment. Claimant contends that she had continued pain throughout the period and her condition failed to improve. However, considering the lengthy medical record of the claimant and her frequent visits to the physician's office, the long lapse in medical treatment does not support her contention that her physical condition was deteriorating during this period.
9. Medical tests and records do not show objective findings of a deteriorating condition. All MRI scans were normal, EMGs did not produce any evidence of abnormalities, and neurological examinations by Dr. Tadan and Dr. Attarian did not show any abnormalities as well.
10. No doctor could find a clear etiology for her pain symptoms. Dr. Porter reported an increase in symptoms of pain and numbness, but no known etiology. Dr. Gryzb likewise could not determine a clear etiology for her pain symptoms. Dr. Attarian conducted an extensive examination of claimant and failed to find any objective evidence of an etiology for her pain. Dr. Hageman, noted that neurology had ruled out abnormalities and concluded there were no new options to relieve the pain. She too did not discover a clear etiology for the pain.
11. Dr. Mercer was the only doctor to perform a Wadell test, an objective test to discover pain amplification. Dr. Mercer analyzed this evidence, along with the medical records of the claimant, and concluded that from the physical viewpoint, there are no objective findings that indicate restrictions or limitations. Previous doctors' conclusions did not have the benefit of these objective findings and were instead based on more subjective evidence.
12. The experience, training, and qualifications of Dr. Hageman, Dr. Gryzb, Dr. Attarian, and Dr. Porter are unknown. However, there is nothing in the facts that lead one to question their credibility. Dr. Mercer is an accomplished neurologist who has been practicing medicine for over fifty years. There is nothing in the record to doubt his credibility.
13. Dr. Mercer thoroughly reviewed the medical record of claimant, as demonstrated through his report and testimony. It is not clear what records Dr. Hageman, Dr. Gryzb, Dr. Attarian, and Dr. Porter had in front of them when drawing their conclusions.
14. Dr. Mercer's report and testimony is most credible because of the objective analysis. No other doctor was able to find any objective evidence that would explain the increased pain that claimant was experiencing. Dr. Mercer's conclusions are supported by Dr. Fenton's declaration that claimant reached a medical-end within six months of the work accident.
15. Dr. Mercer concluded that claimant is at Medical End Result. There are no physical limitations on claimant and no impairment, but she would self-limit the work she can do.

## **Psychological Injury Conclusions**

16. Claimant seeks reimbursement for past and future medical expenses for the psychological injury incurred as a result of her work-related injury.
17. Dr. Hageman opined in a letter that claimant's psychological condition was caused by claimant's work-related injury. Dr. Hageman is not a psychiatrist, and it is not clear what objective evidence she based her conclusion on.
18. Ms. George, although a skilled and dedicated therapist, was not provided a full and detailed record of the objective evidence when writing her conclusions. She opined that claimant's depression was caused by her work-related injury. Ms. George listened to claimant during therapy and provided suggestions on how to lessen her depression. However, she was not able to base her conclusions on the same objective evidence that Dr. Lurie had before him.
19. Dr. Lurie's testimony and report is credible, thorough, and persuasive. Dr. Lurie is an experienced psychiatrist and has the extensive knowledge required to diagnose a complex disorder like somatoform. His conclusions were based on experience, a personal examination, and a thorough review of all records provided by claimant.
20. Claimant's disorder is a result of psychological induced trauma. Dr. Lurie testified that claimant's body generates physical symptoms as a result of psychological induced trauma. In claimant's case, the trauma began with claimant's breakup with her boyfriend on her birthday after her work injury. Claimant counters Dr. Lurie's assertions by arguing that she did not have pain before the work-related injury, but Dr. Lurie opines that the start of the somatoform disorder occurred in the early 1990s with the loss of her boyfriend and brother. The breakup in 2001 was the proverbial straw that broke the camels back.
21. People with somatoform disorder rarely have any objective findings that support their claims of pain. Claimant has noted varying levels of pain since her injury in 2001, but no doctor has ever been able to provide any objective evidence that supports her claims.
22. The psychological stressors are the cause of claimant's pain. The psychological stressors were generated initially by her breakup with her boyfriend in 2001, and then by loss of relationship or threat of relationship loss. Prior to claimant's 2001 breakup, physical therapy did not show any pain magnification and physical therapy was progressing well. Following her breakup, claimant went to see Dr. Fenton, and in his reports Dr. Fenton noted claimant's pain amplification. Claimant argues that there were no psychological stressors for a period of time in 2003. Dr. Lurie noted that this is not abnormal in somatoform disorder and it is highly possible that a skilled therapist would be able to listen and discover psychological stressors from this period.

23. Patients with somatoform disorder do not recognize the psychological stress they encounter. Claimant does not associate her psychological stressors with her physical pain. Claimant never mentioned any psychological stressors when discussing bodily symptoms with her doctors. When being examined by Dr. Lurie, claimant did not mention a relationship following the 2001 boyfriend, which was recorded in Dr. Hageman's September 9, 2004 notes.
24. When Claimant related stress to pain, her pain lessened and therapy progressed. As Mr. Thompson taught claimant how stress related to pain, claimant began to progress and became more optimistic. Mr. Thompson was the only professional care provider who showed claimant how stress can be related to pain. Dr. Lurie opines that claimant requires a therapist who can carefully listen to her psychological stressors and relate them to her pain. This would help her disorder.
25. Dr. Erickson is the only other psychiatrist to see claimant. His conclusion supports Dr. Lurie, in that he too diagnosed claimant with a pain disorder based psychological factors.
26. Claimant has been misdiagnosed with chronic and severe depression. Dr. Lurie opines that any depression claimant suffers from is mild. The record demonstrates that claimant looked forward to meetings with family and friends; she enjoyed the holiday periods and eagerly anticipated upcoming events; she did not benefit from antidepressants and did not worsen when she stopped taking them; she had suicidal ideation, but never had a plan; and she was eager to develop relationships and to go out on dates. Dr. Lurie opines that these feelings are all uncharacteristic of even moderately depressed people.
27. Claimant's somatoform disorder is an intervening cause that does not flow from the work-related injury.
28. Dr. Lurie opines that claimant has no functional limitations based on a psychiatric condition.

### **Vocational Rehabilitation**

29. Claimant claims she is unable to perform the work she did prior to her work-related injury, and the work she is qualified for is below her pre-injury salary. As a result, she seeks reimbursement for necessary vocational rehabilitation expenses.
30. When as a result of an injury covered by workers' compensation, an employee is unable to perform work for which the employee has previous training or experience, the employee shall be entitled to vocational rehabilitation services as may be necessary to restore the employee to suitable employment. 21 V.S.A. § 641.

31. In 2002, claimant's vocational rehabilitation entitlement was rejected based on her sufficient work experience and transferable skills. She was released by doctors to engage in light/medium duty work, which would allow her to make a wage comparable to that of her pre-injury status. There is no evidence that the Burlington labor market has significantly changed since the vocational rehabilitation entitlement assessment.
32. Since then, there is no objective evidence that claimant's condition has worsened. Both Dr. Mercer and Dr. Lurie concluded that there are no physical restrictions on claimant's ability to work.

### **House Ramp and Neurostimulator**

33. Claimant seeks reimbursement for a neurostimulator and house ramp. She claims they are necessary and reasonable medical supplies.
34. An employer subject to workers' compensation must furnish reasonable surgical, medical, and nursing services and supplies to an injured employee. 21 V.S.A. § 640.
35. Claimant has failed to produce any evidence to suggest that the ramp is reasonable or medically necessary. Similarly, claimant did not produce any evidence that the neurostimulator was reasonably or medically necessary. Claimant testified that she initially returned the neurostimulator because she did not believe it was helpful. After this, no doctor gave her a prescription for a neurostimulator. Both Dr. Mercer and Dr. Lurie testified her ongoing care is neither reasonable nor medically necessary. Dr. Lurie believes that psychological care is appropriate, but this is for her somatoform disorder, which is unrelated to her work injury.
36. Claimant failed to sustain her burden of proof for all of the above stated reasons. Her claims are denied in their entirety.

**ORDER:**

Therefore, based on the foregoing Findings of Fact and Conclusions of Law claimant's request for permanent partial disability, medical compensation, and vocational rehabilitation is denied.

Dated at Montpelier, Vermont this 24<sup>th</sup> day of June 2005.

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Laura Kilmer Collins  
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.