NUZZO & ROBERTS NEWSLETTER

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WORKERS' COMPENSATION UPDATE THIRD QUARTER 2016

SUPREME AND APPELLATE COURT DECISIONS

The Insurer's Common Law Right to Sue for Lien Reimbursement

In ***Pacific Insurance Company, Limited v. Champion Steel, LLC,*** 323 Conn. 254 (2016), the Connecticut Supreme Court concluded the workers' compensation insurer can directly sue or intervene against a third party responsible for the claimant's injuries to obtain reimbursement of the workers' compensation lien. The Superior Court Judge ruled that under the Workers' Compensation Act only the employer could file the action to obtain reimbursement of the workers' compensation lien.

In reaching its decision and overturning the Superior Court Judge, the court relied on the common law doctrine that "an insurer who has indemnified the loss of an insured under circumstances in which a third party is legally liable for such loss, has the right to be subrogated to the insured's rights against the third party."

Principal Employer Defense

In ***Gonzalez v. O&G Industries, Inc.***, 322 Conn 291 (2016), the Connecticut Supreme Court addressed the issue of "whether a general contractor [O&G Industries, Inc.] that implemented a contractor controlled insurance program (CCIP) to centralize the purchasing of workers' compensation insurance for a major project has 'paid compensation benefits' to the employees of its subcontractors, thus entitling it to 'principal employer' immunity under General Statutes § 31-291 from further claims by those employees." Specifically, the key question was whether the principal employer paid workers' compensation benefits.

After an explosion caused death and injuries to numerous and workers' compensation benefits were paid out, O&G Industries moved for summary judgment on the third party claims, "arguing that it was immune from civil actions under §31-291 because it was a ''principal employer'' that had paid workers' compensation benefits" to these workers. "The plaintiffs did not challenge the defendant's status as a principal employer, but asserted that a genuine issue of material fact existed as to whether the defendant had ''paid'' workers' compensation benefits. In particular, the plaintiffs argued that, although the

defendant sponsored a CCIP and paid the premium under the policies, the subcontractors had actually paid the benefits, because the defendant effectively shifted the cost of the premium to the subcontractors by issuing change orders in the amount of each subcontractor's insurance costs. The plaintiffs further argued that §31-291 requires a principal employer to demonstrate that it paid for 'all or the entirety' of the workers' compensation benefits to an injured employee, and that the defendant had not done so."

The trial court granted the Motion for Summary Judgment and the Connecticut Supreme Court affirmed the ruling. Although the Supreme Court concluded the trial court did not accurately interpret the phrase "paid workers' compensation benefits" and §31-291 requires a principal employer to bear all the costs of the injured employees' benefits to be entitled to immunity, in this matter there was no genuine issue of material fact that O&G Industries bore all of those costs.

Does the Descendant Employee's Estate Have Standing to Request Benefits?

In ***Estate of Rock v. Univ. of Conn.***, 323 Conn. 26 (2016), the Connecticut Supreme Court ruled that the estate of an injured worker is not entitled to any benefits as the result of an injury or occupational disease of a worker. In this matter the employee died as a result of mesothelioma caused by occupational exposure to asbestos. However the employee did not have any dependents entitled to benefits pursuant to Connecticut General Statutes §31-306.

The trial commissioner found the employee's estate lacked standing to pursue disability benefits. The Compensation Review Board affirmed that ruling, but added the estate could seek burial expenses, medical expenses and loss of wages.

The Supreme Court concluded the estate was not a legal representative pursuant to Connecticut General Statutes §31-294c and the Board incorrectly ruled the estate had standing to pursue burial expenses, medical expenses or loss of wages.

REVIEW BOARD DECISIONS

Injury Did Not Arise Out of Employment

In ***Clements v. Aramark Corporation***, 6034 CRB-2-15-10 (July 18, 2016), the claimant was walking into work from her car and was not in any stage of physical exertion when she became dizzy, fainted, and struck her head. The cause of the fainting was determined to be from a cardiac condition and while in the emergency room the claimant suffered a cardiac arrest.

The trial commissioner ruled based on the records and conclusions of the hospital

physicians that the fall was the result of cardiogenic syncope. The trial commissioner then dismissed the case because the claimant's injury did not arise of her employment with the respondent employer.

In the appeal of the trial commissioner's finding it is alleged the claimant "fell while walking to the workplace for the benefit of her employer. The hard cement upon which Ms. Clements struck her head was a condition of the employment that essentially contributed to the head injury. A possible fall was an incidental risk associated with the beginning of her workday, and the employment brought the claimant to the place of injury."

The Compensation Review Board has affirmed the trial commissioner's dismissal of the claim. Specifically, the medical records the trial commissioner relied on were not challenged except by one physician who examined the claimant for the first time almost two years post injury. Additionally, as the claimant had not reached her work station when she fell arguably she was not "reasonably fulfilling the duties of the employment or doing something incidental to it." Furthermore the fainting spell and cardiac issue arguably did not arise from the employment. The Board also pointed out the cement sidewalk on which the claimant fell was not a dangerous condition of the claimant's employment. In essence, Ms. Clement just happened to be walking into work when she fainted from the cardiac event and thus the claim was not compensable.

The Claimant Must Prove the Need for Treatment Even if a Motion to Preclude has Been Granted

In a 2 to 1 decision, the Compensation Review Board in ***Mott v. KMC Music***, 6025 CRB-1-15-8 (August 23, 2016), affirmed the trial commissioner's conclusion that the respondents did not file a timely disclaimer or submit a Voluntary Agreement accepting the case within one year of the date of injury. Therefore, the respondents were precluded from contesting compensability. The majority concluded that offering a Voluntary Agreement after one year is not sufficient to prevent the preclusion if the proper disclaimer was not filed within one year of the injury. Furthermore, sporadic incomplete payments of indemnity benefits were not sufficient to establish a full acceptance of a claim.

The dissenter concluded the issuance of the Voluntary Agreement more than 12 months after the injury, which the claimant's signed and was approved by the Workers' Compensation Commission should be considered evidence the claimant acknowledged the case had been accepted and preclusion was no longer an issue.

However, the Compensation Review Board ruled that despite the preclusion there was not sufficient probative medical

evidence to support a conclusion the claimant's headaches were caused by her compensable injuries. The Board citing to ***Mehan v. Stamford***, 127 Conn. App. 619, 630 (2011) and ***Harpaz v. Laidlaw Transit, Inc.***, 286 Conn. 102 (2008) stated "although a motion to preclude bars noncomplying employers from contesting liability, a claimant is still required 'to prove that he suffered a compensable injury, i.e., an injury that arose out of and in the course of employment, including the extent of his disability'."

WHEN IN DOUBT, CALL US

We are only a phone call away. If you have any questions, call us!!

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