

# NUZZO & ROBERTS

## NEWSLETTER

December 2019

### WORKERS' COMPENSATION UPDATE: FOURTH QUARTER 2019

In recent months, the Connecticut Appellate Court and the Compensation Review Board have issued several important decisions regarding workers' compensation law.

### SUPREME AND APPELLATE COURT DECISIONS

#### The Denial of the Motion to Open the Approved Stipulation

In *Dombrowski v. New Haven*, 194 Conn. App. 739 (2019), the Connecticut Appellate Court affirmed the trial commissioner and Compensation Review Board's denial of the claimant's Motion to Open an approved settlement Stipulation.

The \$22,500 Stipulation was approved by Commissioner Jack Goldberg. At the same time the claimant signed a "Settlement Agreement, General Release and Covenant Not to Sue" (Agreement) which was not part of the Stipulation. The parties did not ask Commissioner Goldberg to approve or review the Agreement. However, seven days after being sent the \$22,500 for the approved Stipulation, the claimant refused to accept

the check and returned it to the insurer. The claimant alleges he did not knowingly or willingly agree to the terms of the Agreement.

The trial commissioner denied the Motion to Open the approved Stipulation pursuant to Connecticut General Statutes § 31-315, because "the plaintiff failed to offer any evidence of fraud, misrepresentation, accident, or mistake, and the plaintiff did not contest the adequacy of Commissioner Goldberg's canvass concerning the Stipulation." Commissioner Goldberg also did not address the Agreement which is not a part of the Workers' Compensation Commission case. Therefore, the trial commissioner did not have subject matter to interpret the Agreement.

In affirming this matter, the Connecticut Appellate Court cited to the Connecticut Supreme Court's decision in *Leonetti v. MacDermid, Inc.*, 310 Conn. 195 (2013), which stated, "the commission cannot adjudicate the rights and obligations of parties with respect to contracts, or portions thereof, that have no nexus to the act."

## COMPENSATION REVIEW BOARD DECISIONS

### What Benefits are Owed When the Claimant Dies With no Dependents?

In *Rock v. University of Connecticut*, 6237 CRB-8-18-1 (October 17, 2019), the claimant was a 35-year employee of the University of Connecticut who died of mesothelioma. At the time of death, the claimant was unmarried and had no surviving dependents. After his death, a claim for occupational disease was filed by the administrator of the claimant's estate.

The trial commissioner and the Compensation Review Board ruled the claimant's estate did not have standing to pursue permanent partial disability benefits. Additionally, the claim for temporary total disability benefits was dismissed because the action had not been filed before the decedent's death. The Compensation Review Board concluded, "the estate, as the legal representative of the deceased worker, had standing to pursue certain claims for compensation but not temporary total or permanent partial disability benefits."

The Connecticut Supreme Court then ruled in the *Estate of Rock v. University of Connecticut*, 323 Conn. 26, 32 (2016), that an estate is not a legal entity and can neither sue nor be sued. Subsequently, the estate requested a formal hearing to determine "whether the legal representative of the decedent's estate had

standing to pursue benefits in light of the Supreme Court's decision and whether the decedent had sustained an occupational disease."

At the new formal hearing, the trial commissioner ruled the case was not brought by the estate to obtain benefits, but to determine if the decedent claimant was owed any benefits at the time of death. In essence, the decedent remained the claimant. However, the trial commissioner concluded, and the Compensation Review Board affirmed there was insufficient evidence to rule the claimant suffered from an occupational disease. Thus, the claim for compensation was denied.

### Medical Marijuana

In *Caye v. Thyssenkrupp Elevator*, 6296 CRB-1-18-11 (October 29, 2019), the Compensation Review Board addressed whether "the federal Controlled Substances Act, 21 U.S.C. § 801 et. seq. (CSA), proscribe a state agency from ordering an insurance carrier to pay or reimburse for marijuana prescriptions." The parties all agree the claimant's use of medical marijuana is reasonable and necessary medical treatment.

In a 2-1 decision, the Compensation Review Board affirmed the trial commissioner's order directing the respondent to pay for the claimant's medical marijuana prescriptions and reimburse the claimant for his expenses in obtaining medical marijuana. However, there is no obligation to issue direct

payment to a pharmacy for this treatment, only reimbursement.

In this matter, the medical marijuana was prescribed, “to treat the claimant’s post-laminectomy syndrome, lumbar facet syndrome, post amputation stump neuralgia pain and phantom limb pain.” In ordering the reimbursement for the medical marijuana, the trial commissioner concluded the claimant met all the requirements for medical marijuana registration from the State of Connecticut Department of Consumer Protection and medical marijuana was obtained from a licensed pharmacist.

The Compensation Review Board ruled that although the federal law establishing the illegality of marijuana and the state Act making medical marijuana legal are in conflict, the statutes can be reconciled. In its decision, the Compensation Review Board cited to a Connecticut Superior Court case *Smith v. Jensen Fabricating Engineer, Inc.*, CV-18-6086419 (March 4, 2019), in which the Superior Court Judge stated, “the federal preemption is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there [is] between them.” Specifically, Congress was aware of state medical marijuana programs and has acted to allow the programs.

The Compensation Review Board also concluded the “appellants’ fear of federal prosecution for compliance with a lawful

order of this commission is speculative at best. Should an employer or insurer being ordered by this commission to reimburse a claimant for a medical marijuana prescription fail to do so, it could be subject to monetary sanction pursuant to Chapter 568. We believe that these penalties would negate the *mens rea* of willfulness necessary to sustain a criminal prosecution for ‘aiding and abetting’ a criminal act pursuant to the CSA or the RICO Act, because an employer or insurer reimbursing a claimant for medical marijuana prescriptions clearly would not be acting volitionally, but under an order from a state agency exercising its statutory police powers and empowered to sanction noncompliance.”

## WHEN IN DOUBT, CALL US

**W**e are only a phone call away. If you have any questions, call us!!

Contact David Weil at [dweil@nuzzo-roberts.com](mailto:dweil@nuzzo-roberts.com), Jane Carlozzi at [jcarlozzi@nuzzo-roberts.com](mailto:jcarlozzi@nuzzo-roberts.com), Jason Matthews at [jmatthews@nuzzo-roberts.com](mailto:jmatthews@nuzzo-roberts.com), James Henke at [jhenke@nuzzo-roberts.com](mailto:jhenke@nuzzo-roberts.com), Kristin Mullins at [kmullins@nuzzo-roberts.com](mailto:kmullins@nuzzo-roberts.com), Michael Randall at [mrandall@nuzzo-roberts.com](mailto:mrandall@nuzzo-roberts.com) or Evan Dorney at [edorney@nuzzo-roberts.com](mailto:edorney@nuzzo-roberts.com)

**NUZZO & ROBERTS, L.L.C.**  
**P.O. Box 747, One Town Center**  
**Cheshire, CT 06410**  
**Phone: (203) 250-2000**  
**Fax: (203) 250-3131**  
**or [www.nuzzo-roberts.com](http://www.nuzzo-roberts.com)**

To receive this newsletter via email, please visit <http://www.nuzzo-roberts.com/contactus.php> and complete the form provided.