

WORKERS' COMPENSATION CASE LAW UPDATE

Patrick Switzer v Connectron Inc.

Decided 2/7/03 – Not for Publication – A4352 99

This case involves a reversal by the Superior Court on respondent's Motion to Dismiss.

Petitioner filed an occupational claim against Connectron where he had been employed as a punch press operator from 1987 until 5/93. Petitioner alleged that position required repeated trauma to both hands and wrists which caused carpal tunnel syndrome. He first "learned" of his alleged injury when he experienced pain and numbness but became aware it was work related in May 1994 after he was laid off by Connectron and

began working for a new employer, Capitol Ornamental Concrete Specialties. He was sent to a physician on May 3, 1994 after injuring his left wrist while shoveling during the course of employment.

Connectron filed a Motion to Dismiss the occupational claim relying upon Bond v. Rose Ribbon. Expert reports were submitted and the Judge refused to vacate the dismissal.

The Supreme Court adopted Bond (the last injurious exposure rule) concerning employees exposed to work conditions which activate or cause a progressive occupational disease and the existence of such disease remains

undisclosed or unknown over a period. The employer during whose employment the disease is disclosed will be liable. The foundation of the Bond rule is that the employer at the time the injury becomes known or manifest must have contributed to the injury. In other words, the employee continues to be exposed to work conditions which aggravate the disease during his current employment.

In this claim, petitioner's job functions and exposure at Capitol were not clear and the Superior court reversed the lower court with the mandate that the factual record must be developed in greater detail.

Gelin Lorenzo v Lance Plastics

Decided 2/7/03 – Unpublished Opinion – A 5425 00 & 1

Petitioner appealed from a lower court determination denying his request to reopen a 1995 award of 27.5% ppt flowing from a work related back injury in 1993 based on his allegations of increased disability. Petitioner asserted that the lower court had insufficient basis to attribute any increase in disability to his subsequent employment as a gas station attendant and that it was respondent's burden to establish the increase was not related to the original injury.

The Appellate Division agreed with petitioner that there was insufficient objective evidence to fix definitive responsibility on the subsequent employer, but that it was the petitioner's burden to show by sufficient evidence, a causally connected increase additional to the impairment adjudicated at the first determination.

Petitioner relied upon Peterson v Hermann Forwarding. The Court found the present claim not akin to Peterson. In Peterson, there was clear objective medical proof that the claimant had become permanently and totally

disabled, that his disability had progressively worsened even after he quit working and there was no proof of injuries at his subsequent employment.

The Court found here that petitioner did not meet his burden of proof since the record did not contain the kind of objective medical proof of increase in disability as distinct from his subjective complaints that is required to address the issue of causal relationship.



Ken Sylvester is chairman of Cooper Levenson's Workers' Compensation Department with over 20 years of courtroom experience, most of which is dedicated to the handling of workers' compensation files.

University of Mass Medical Center v Mario Christodoulou et al and Travelers Insurance

Decided 4/16/03 – Not for Publication – A1682/1686-02T3

This is a common law action by medical providers for the reasonable value of medical services that were at issue in a workers compensation case. It also includes a cross claim by the petitioner against the carrier for indemnification with respect to medical bills and counsel fees for defending against the medical providers' actions.

The primary issue was whether the petitioner, in a workers compensation claim which was settled without providing for payment of medical bills, may be held accountable at common law by medical providers who failed to intervene in the workers compensation action, despite having received timely notice of its pendency. The other issues were whether respondent may be held liable for the unpaid medical bills; whether the hold harmless agreement requires respondent to reimburse petitioner for legal fees in defending the common law action.

These issues were brought before the Superior Court on motions for summary judgment.

The lower court denied the motions and the parties appealed.

At the time of the Section 20 settlement, counsel for petitioner asked:

Q: You also understand that in the event that there is a claim against you for hospital bills the insurance carrier will protect you in this matter?

A: Yes, I understand.

In the Section 20 Order, the following language was also set forth:

Respondent will hold petitioner harmless for any medical or hospital bill arising out of the accident...

The Court reiterated the doctrine as held in *Medical Diagnostic Assoc v Hawryluk*, 317 NJ Super 338, 347 (App Div 1998), cert denied 160 NJ 89 (1999) that a medical provider may not sue petitioners or respondents at common law while a compensation case is pending. They may file a timely claim petitioner for the value of services rendered in the Division. If the Division rejects the petitioner's claim or the medical providers' claim, on the merits,

the provider can then sue the petitioner at common law. Had the medical providers filed a timely petition in the Division or intervened in the petitioner's case, they could have pursued recovery despite the other parties' desire to settle their differences.

Plaintiffs argued, without support authority, that a Section 20 dismissal should be treated in the manner as a judgment, thereby entitling them to pursue a common law action. We disagree. Section 20 is designed to complete settlement of all issues. Permitting plaintiffs to pursue this common law action would render the settlement illusory for the parties to the compensation action, an outcome that would be entirely inconsistent with public policy.

The appellate court held that the common law action against the petitioner is barred because of the medical providers' failure to intervene or file their own claim in a timely manner in the compensation claim; that the hold harmless agreement provides no basis for the medical providers' action against the carrier and that the petitioner is entitled to reimbursement from the respondent for legal fees in defending the action.

If you have any questions, or would like more information, please call our Workers' Compensation Department at (609) 344-3161.

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