

STEWART, GREENBLATT, MANNING & BAEZ

DONALD R. STEWART (RET.)
MADGE E. GREENBLATT
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
LUKE R. TARANTINO
THOMAS A. LUMPKIN
JONATHAN SO

ATTORNEYS AT LAW
6800 JERICHO TURNPIKE
SUITE 100W
SYOSSET, NY 11791
516-433-6677
FAX 516-433-4342

KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

RAYMOND J. SULLIVAN
MONICA M. O'BRIEN
MARY ELLEN O'CONNOR
JAMES MURPHY
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

In the Matter of ESTATE OF NORMAN YOUNGJOHN, Appellant
v.

BERRY PLASTICS CORP., Respondent
and
WORKERS' COMPENSATION BOARD, Respondent

Decided February 21, 2009

Facts: The decedent injured his right shoulder and left elbow at work on December 20, 2014. In 2016, his doctors provided medical reports of a schedule loss of use to each arm. The carrier's IME also agreed there should be a schedule award, but the doctors disagreed on the percentage. Prior to resolution of the case, the decedent passed away due to unrelated causes on March 4, 2017. Following his death, the parties stipulated to a schedule award of 55% to the left arm and 45% to the right arm. The law judge directed an award for the entire schedule (312 weeks plus 23.8 weeks for a protracted healing period - less payments made) to the estate. On appeal the Board limited the award to the amount of reasonable funeral expenses.

Holding: *Modified*

Discussion: The estate argued that because of the 2009 amendment to the WCL allowing for the option of schedule to be paid in one lump sum the entire value of the schedule accrued at the time of the accident and was payable. The Court rejected that argument having noted this change did not alter the "longstanding rule" that where a claimant dies without a widow or child, only that portion of the schedule award that had accrued at the time of death is payable to the estate along with reasonable funeral expenses. The matter was restored to the Board to recalculate the benefits that had accrued as of the date of death.

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