

STEWART, GREENBLATT, MANNING & BAEZ

MADGE E. GREENBLATT (RET.)
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
RAYMOND J. SULLIVAN
LUKE R. TARANTINO
THOMAS A. LUMPKIN
DIANE P. WHITFIELD

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

DONALD R. STEWART (1949-2021)
KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

JAMES MURPHY
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of THERESA MURPHY, Appellant,
v.
NEW YORK STATE COURTS, Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

January 6, 2022

Facts: The claimant's husband, who was employed as a court officer, assisted in clean-up at ground zero between September 2001 and February 2002 and was diagnosed with cancer in January 2015. After his diagnosis the husband registered his participation in the recovery efforts pursuant to Workers' Compensation Law Article 8-A. He died of the cancer in 2017. The claimant then filed a claim for death benefits in 2019. The claim was controverted by the employer and after litigation, it was established. The employer appealed and the Board Panel reversed and disallowed the claim finding insufficient credible evidence of causally related death. The claimant filed an Application for Reconsideration/ Full Board Review, which was denied.

Holding: *Reversed.*

Discussion: The claimant bears the burden of presenting competent medical evidence showing a causal relationship between the decedent's death and employment. The only medical expert to testify apportioned 80% of the decedent's death to his clean-up work and the other 20% to tobacco use and volunteer firefighter work. Upon review the Board Panel found this opinion incredible but the doctor demonstrated that the decedent's participation in the recovery efforts at Ground Zero was at least a contributing factor in his death. The Board has the authority to accept or reject portions of a doctor's testimony but cannot completely reject uncontroverted testimony.