

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 John DECANDIA, Appellant
v
PILGRAM PSYCHIATRIC CENTER, Respondent
and
WORKERS' COMPENSATION BOARD, Respondent
Decided July 15, 2021

Facts: In June 2013 the Claimant filed an accident report with his employer alleging he was bitten by two ticks on the job. Six years later he filed a claim for workers' compensation benefits alleging injuries from an "unknown tick bacteria entering his bloodstream." The carrier raised various issues including Section 28 of the WCL. While the judge established the case for tick bites and consequential Lyme disease, the decision was reversed by the Board finding insufficient evidence to establish the case on a causally related basis and that the claim was untimely.

Holding: *Affirmed.*

Discussion: The Court held that it was clear that the claim, filed with the Board in 2019 for an alleged tick bite from 2013, was untimely with respect to the offending tick bite and any consequential claim. The Court also confirmed that setting aside the issue of timeliness, there is a lack of substantial evidence to support the allegation that the claimant actually suffers from Lyme disease or that there is any connection with any such disease and his employment. While the initial bites were said to have taken place in 2013, the medical records reference flu-like symptoms in December 2018 with a history of 3 tick bites from 2017. Three Lyme disease tests were either negative or inconclusive. In addition, the claimant's physician confirmed that it would be unlikely for someone to be asymptomatic with Lyme's disease for more than five years after exposure. Although the carrier's independent medical examiner stated there is a diagnosis of "chronic post-Lyme

disease” on a causally related basis, the Court confirmed the Board is vested with authority to resolve conflicting medical opinions.

Stewart, Greenblatt, Manning & Báez