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DONALD R. STEWART (1949-2021)
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Supreme Court, Appellate Division, Third Department, New York

In the Matter of JEFFREY CISNERO, Claimant

v.

INDEPENDENT LIVERY DRIVER BENEFIT FUND, Appellant

and

NEW YORK BLACK CAR OPERATIONS INJURY COMPENSATION FUND, Respondent

WORKERS' COMPENSATION BOARD, Respondent

Decided June 24, 2021

Facts: Appeal from decision which ruled claimant sustained accidental injuries arising out of and in the course of his employment.

The claimant was working as a for-hire livery driver and was dispatched by Excellent Car Limousine Services to transport a passenger. The passenger demanded the claimant give him money and shot the claimant multiple times. The claimant filed a Workers' Compensation claim. ECLS, the livery base that dispatched the claimant, is a member of the Independent Livery Driver Benefit Fund which is responsible for providing compensation to injured drivers who are independent livery drivers under Executive Law Article 6-G. The vehicle the claimant was driving was only registered by Manuel Brache and the vehicle was affiliated with NEUN-NYLLC which is a member of the New York Black Car Operators Injury Compensation Fund. They are responsible for providing compensation to injured drivers who are black care operators under Executive Law Article 6-F. Following several hearings, the administrative Law Judge concluded the claimant was not performing a covered service under either the ILDBF or the NYBCOICF and disallowed the claim. The Board Panel reversed the Judge's decision and found that because the claimant was on a dispatched call from an ILDBF affiliate, his injuries were covered by the ILDBF. The Board found the claimant's injuries arose out

of and in the course of employment and the carrier appealed. The carrier argued there was a misinterpretation of statutory provisions governing the ILDBF.

Holding: *Affirmed.*

Discussion: The Court found that at the time of the incident, the claimant was acting as an independent livery driver and was dispatched by ECLF which is a member of the ILDBF and is an independent livery base. The claimant was engaged in a covered service as he was dispatched to transport a passenger. The injuries resulted from a crime as a police report was prepared detailing the circumstances of the shooting. Given the affect of plain meaning of the unambiguous statutory language, the claimant's injuries clearly fell within the provisions of Executive Law Section 160-ddd(1) thereby triggering the liability of the ILDBF.

Stewart, Greenblatt, Manning & Pool