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Supreme Court, Appellate Division, Third Department, New York

In the Matter of

KRISTEN REXFORD, AS ADMINISTRATOR OF THE
ESTATE OF REGINALD RADLEY, deceased, claimant

v.

ERECTORS AND RIGGERS, INC, ET AL, Appellant

and

SPECIAL FUNDS FOR REOPENED CASES, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

July 3, 2019

Facts: This is an Appeal from the decision of the Board filed May 9, 2018 ruling that liability did not shift to the Special Fund for Reopened Cases pursuant to Workers' Compensation Law Section 25-a. This claim was established for a heart attack suffered while working. The claimant in that matter returned to work thereafter but continued to experience heart problems and had a second heart attack in November 1991. This claim, which is dated August 1987, was transferred to the Special Fund for reopened cases pursuant to Workers' Compensation Law Section 25-a on November 23, 1997. Thereafter, the claimant in that matter died of cardiac arrest on March 4, 2016 and the administrator of the estate filed a death claim alleging that the decedent's August 1987 heart attack contributed to the decedent's death. A Notice of Indexing was filed against the Special Fund. The Special Fund controverted the claim. Prima facie medical evidence was found causally related death and the Special Fund and the State Insurance Fund each maintained that they were not the carrier responsible for the death claim. The Judge ruled that the State Insurance Fund was the proper carrier based on the Court of Appeals decision in American Economy Insurance Company v. State of New York (30 N.Y.3d 136 [2017], cert denied __ us __ 138 S ct 2601 [2018]). The State Insurance Fund and the employer sought review the

Board asserting the Special Fund was responsible because liability had previously been transferred to it under Section 25-a. The Board disagreed and relying on Section 25-a(1-a) and the American Economy decision, that Workers' Compensation Law Section 25-a liability did not apply to the case and that the Special Funds was not responsible. The State Insurance Fund appeals.

Holding: *Reversed*

Discussion: The Court concluded that its decision of Misquitta v. Getty Petroleum (150 A.D.3d 1363 [2017]), which was decided after the enactment of Section 25-a(1-a) held that the Special Fund remains liable for consequential death claims in situations whether the decedent had a compensable Workers' Compensation claim and liability for which was transferred to the Special Fund prior to January 1, 2014. The Court held in Misquitta decision is controlling and that the Special Funds is liable for the claimant's consequential death claim as the transfer occurred well before January 1, 2014.

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