

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

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
ASHA V. EDWARDS
ANDREA L. De SALVIO
KRISTY L. BEHR
DAVID S. FOODEN
LUKE R. TARANTINO
THOMAS A. LUMPKIN

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

RAYMOND J. SULLIVAN
MONICA M. O'BRIEN

OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

In the Matter of BRENDA MANGAN, Appellant

v.

TRY-IT DISTRIBUTING COMPANY, Respondents

and

SPECIAL FUNDS FOR REOPENED CASES, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

June 30, 2016

Facts: The decedent had a Workers' Compensation injury established for a back injury in the year 2000. In 2009 the decedent was classified with a permanent partial disability and the case was transferred to the Special Funds for reopened cases under Section 25-a. The average weekly wage was established at \$813.49 based upon payroll records for the year preceding the injury. The decedent died July, 2012 of complications arising out of a causally related back surgery. In 2013 the decedent's widow filed a death claim. After a hearing, the Workers' Compensation Law Judge established the case for causally related death and calculated the death benefits based on the decedent's average weekly wage at the time of his death. The Board modified the award of death benefits noting that the amount of benefits should be calculated on the basis of the decedent's average weekly wage at the time of the compensable injury. The claimant appealed.

Holding: Affirmed.

Discussion: The Court noted that calculation of death benefits is based upon average weekly wage on the date of accident or date of disablement. The award could then be made subject to the increased minimum and maximum death benefit rates as set forth in the Workers' Compensation Law revisions of 2007. The Court noted the Board correctly determined the calculation of death benefits in this matter based upon the average weekly wage at the time of the 2000 accident.