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Supreme Court, Appellate Division, Third Department, New York

Matter of ROBERT MANOCCHIO, Claimant

v

ABB COMBUSTION ENGINEERING, Appellants,

and

ARROWPOINT CAPITAL, on Behalf of THOMAS O'CONNOR, Respondent,

and

WORKERS' COMPENSATION BOARD

Decided May 4, 2017

Facts: The claim was established for an occupational disease stemming from asbestos exposure. The most recent employer, ABB Combustion, was found liable for the claim. ABB Combustion sought to apportion responsibility for the claim among claimant's prior employers pursuant to §44, and the WCLJ denied this request. The Board affirmed and employer and carrier appealed.

Holding: *Affirmed.*

Discussion: The Court noted the claimant's 1992 chest x-ray was normal, versus the 1999 x-ray which revealed findings consistent with asbestos exposure. The claimant was not diagnosed or treated for his condition until 1999, and there is no proof that the claimant experienced any symptoms related to asbestosis prior to the diagnosis. Even the carrier's own consultant could not provide a date of contracture. In light of the lack of objective proof in the record that the claimant contracted asbestosis while working for another employer, the Board's decision is supported by substantial evidence.