

**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  
ANDREA L. De SALVIO  
KRISTY L. BEHR  
DAVID S. FOODEN  
LUKE R. TARANTINO  
THOMAS A. LUMPKIN  
JILLIAN A. SMITH  
JONATHAN SO

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

RAYMOND J. SULLIVAN  
MONICA M. O'BRIEN  
MARY ELLEN O'CONNOR  
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

Matter of SCOTT MICKELSON, Claimant-Respondent

v

VALUE CONSTRUCTION, Appellants,

and

WORKERS' COMPENSATION BOARD, Respondent

Decided May 25, 2017

Facts: Claimant filed a claim for workers' compensation benefits in April 2013 for injuries to the left wrist. The Workers' Compensation Law Judge found the claim was time-barred under Workers' Compensation Law Section 28, as the claimant knew or should have known the condition was caused by his employment in July 2008. The Workers' Compensation Board affirmed but on Full Board Review rescinded the decision and established the claim with a date of disablement of May 6, 2013.

Holding: *Modified to remit the matter to the Workers' Compensation Board.*

Discussion: Although the claimant was symptomatic in 2008 and thought the pain was work related, the record does not establish that he actually knew or should have known that it was due to the nature of his employment until his condition was diagnosed. The Board is afforded great latitude in setting the date of disablement and its decision to set the date of disablement in May 2013 will not be disturbed. However, the issue of whether the claimant's left wrist injury is consequential to a 2003 right wrist injury was raised before the Board, but initially not decided on because the Board Panel had found the claim untimely. The Full Board failed to address that issue, and the case was remitted to the Board to rule on it.