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State of New York Supreme Court, Appellate Division, Third Judicial Department, New York

In the Matter of HOWARD FULLER, Appellant

v.

ALBERT JACKSON, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

May 26, 2022

Facts: Claimant sustained a compensable accident in 2006 that became the responsibility of the Uninsured Employers' Fund. The claimant also brought a third-party action as a result of his injuries. The Uninsured Employers' Fund consented to the settlement of the claimant's third-party in 2013 agreeing to reimbursement for a portion of its lien and granting consent conditioned upon the receipt of a copy of the Judicial Closing Statement. Thereafter, efforts were made through the Uninsured Employers' Fund's third-party administrators to obtain a copy of the Closing Statement. The claim was ultimately reopened by the Uninsured Employers' Fund's third-party administrator following multiple efforts to obtain a copy of the Closing Statement. Ultimately, in the absence of the production of a Closing Statement, the presiding Law Judge suspended the claimant's benefits. The claimant argued that because the Uninsured Employers' Fund lien had been satisfied, the absence of the Closing Statement was not prejudicial and the claimant should continue to receive his indemnity benefits. The claimant also raised the doctrine of *laches*.

Holding: *Affirmed.*

Discussion: With regard to the claim that *laches* applied, the Court ruled that multiple efforts had been made over multiple years to obtain a copy of the Third-Party Closing Statement and that substantial evidence supported the Board's decision finding that it was not applicable to this claim. The Court went on to say that the carrier has a lien on the proceeds of a third-party action equal to the amount of benefits already paid in order to prevent a claimant from receiving a double recovery. Under these circumstances, the Board's determination to suspend claimant's benefits pending proof that the lien had been satisfied will not be disturbed. The Court also indicated that the original consent to the third-party settlement had been contingent on the submission of a Closing Statement and that element had never been satisfied by the claimant.

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