

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW

MADGE E. GREENBLATT (RET.)
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
RAYMOND J. SULLIVAN
LUKE R. TARANTINO
THOMAS A. LUMPKIN
DIANE P. WHITFIELD

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (1949-2021)

KAFI WILFORD (2003-2010)

MICHAEL H. RUINA (1992-2016)

JAMES MURPHY
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

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

In the Matter of CHRISTINE KELLY, Claimant

v.

CONSOLIDATED EDISON COMPANY OF NY, Appellant

and

SPECIAL FUNDS FOR REOPENED CASES, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

May 26, 2022

Facts: Employer appealed a decision finding that liability did not shift to Special Funds pursuant to Workers' Compensation Law Section 25-a. Claimant was the spouse of a decedent who had an established underlying occupational disease claim for asbestos related pleural disease and asbestosis. In the underlying claim, liability was transferred to Special Funds under Section 25-a. Following the death of the decedent, the claimant herein filed a claim for death benefits. The claim was established as a compensable death claim. Based upon the finding that Section 25-a had been established in the underlying claim, the employer alleged that Special Funds should be responsible for death benefits. The presiding Law Judge found that Special Funds was not liable based upon Section 25-a

being closed to new applications effective January 1, 2014 and the death herein occurring thereafter. That finding was affirmed by the Review Panel.

Holding: *Affirmed.*

Discussion: Citing the Court of Appeals Decision in Matter of Verneau v. Consolidated Edison Company of New York, Inc. 37 N.Y.3d 387, the Appellate Division ruled that this issue had been addressed and that regardless of the prior transfer of liability for a Workers' Compensation claim arising out of the same injury, Special Funds would not be responsible for the new claim.

Stewart, Greenblatt, Manning & Baez