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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Ira Jason LUCKS, Respondent

V

VOLT INFORMATION, Appellant

and

SPECIAL FUND FOR REOPENED CASES, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

May 12, 2022

Facts: In 1980 the claimant suffered from a heart attack and was classified as a permanent partial disability. The responsible carrier at that time was CNA. Liability for the claim was transferred to the Special Funds (Section 25-a) in 1988. The Special Funds continued to pay benefits to the claimant until his death in 2013. That same year, the executor of the estate filed a claim for a consequential death against New Hampshire Insurance (the carrier at that time) Issues regarding coverage were considered and in August 2015, the law judge found that New Hampshire was the responsible carrier and that it failed to raise Section 25-a responsibility prior to January 1, 2014 (the day that the Special Funds was closed to new applications per Section 25-a(1-a)). Following additional appeals, the Board ruled that CNA was the responsible carrier, and that because it failed to raise Section 25-a prior to January 1, 2014, it could not claim Special Funds relief. It was from that decision that CNA filed its appeal.

Holding: *Affirmed.*

Decision: The Court noted that the claimant died in June 2013 and filed a claim for death benefits "well in advance of the January 1, 2014 cutoff date..." The issue of

Section 25-a relief was not raised until 2015 by New Hampshire. CNA first started to receive notice of the claim in 2017. Notwithstanding this the Court confirmed that per the statute the issue of Section 25-a needed to be raised prior to the January 1, 2014 cutoff date.

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