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Supreme Court, Appellate Division, Third Department, New York

In the Matter of URSULA MELLIES, Respondent

v.

CONSOLIDATED EDISON COMPANY OF NY, INC. et al, Appellants

WORKERS' COMPENSATION BOARD, Respondent

June 30, 2016

Facts: The decedent had a work-related accident established for asbestosis in 1996. The decedent was classified with a permanent partial disability. In 2010, the decedent was in the hospital after undergoing surgery for a condition unrelated to asbestosis. The decedent suffered congestive heart failure and required additional surgery for an infected gallbladder, developed pneumonia and died. The Death Certificate indicated respiratory failure as the cause of death. The widow filed a death claim. The Judge credited the medical opinion of the claimant's expert and established the death claim. The Board affirmed the Judge's finding and the employer and carrier appealed.

Holding: Decision affirmed.

Discussion: The Court noted that the employer alleged that the testimony of the claimant's medical expert, Dr. Ploss, was speculative and not supported by rational basis. The Court disagreed. The Court noted that the doctor reviewed the decedent's records and testified that the decedent's death was directly due to numerous medical conditions but that the asbestosis occupational disease was nevertheless a contributing factor. The Court noted the testimony of Dr. Ploss supported the establishment of the death claim as the medical opinion was supported by a rational basis. Dr. Ploss noted that the significant respiratory insufficiency was caused by the asbestosis and restricted the expansion of the decedent's lungs therefore contributing to the decedent's respiratory failure and death. The Court noted that the work-related illness need not be the sole or even the most direct cause of death provided the claimant can demonstrate the compensable illness was a contributing factor to the decedent's demise.

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