

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW

DONALD R. STEWART (RET.)
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
LUKE R. TARANTINO
THOMAS A. LUMPKIN
JONATHAN SO

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

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

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

Supreme Court, Appellate Division, Third Department, New York

EDWARD CONNOLLY, Respondent,

v.

COVANTA ENERGY CORPORATION et al., Appellants,

and

WORKERS' COMPENSATION BOARD, Respondent

May 30, 2019

Facts: Claimant filed a claim for occupational disease based upon the inhalation of mold causing allergic bronchopulmonary aspergillosis. The WCLJ established the claim as a compensable occupational disease. That decision was affirmed by the Board. In an appeal to the Third Department, the Court reversed, finding that there was insufficient medical evidence to establish a compensable occupational disease. Case was remitted back to the Board for further proceedings. Upon return to the Board, the claim was restored on the issue of whether the claimant's allergic bronchopulmonary aspergillosis constituted an accidental injury. The carrier then attempted to have the claimant's medical evidence precluded under Section 137. That request was denied by the WCLJ and affirmed by the Board. After further development of the record the WCLJ established the claim as an accident with the date of accident being the date of diagnosis. The Board affirmed and the carrier appealed.

Holding: *Affirmed*

Discussion: The Court first found that it was not an error to consider the claim as an accidental injury because, following remittal to the Board from the Appellate Division, the Board was free to consider a new theory for the claim and denial of the claim as an occupational disease did not preclude a claim for accidental injury. The Court

also rejected the claim that the claimant's medical evidence should be precluded under Section 137. Regarding the merits of the claim the Court found that there was no time definiteness requirement for a claim to be considered an accidental injury. Generally, the Court found that the Board's decision of the claimant sustaining an accidental injury was supported by substantial evidence and would not be disturbed.

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