

STEWART, GREENBLATT, MANNING & BAEZ

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

ATTORNEYS AT LAW
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

New York State Court of Appeals

In the Matter of the Claim of Frances Veneau, Claimant,
v.
Consolidate Edison Co., Respondents,
Special Fund for Reopened Cases, Appellant,

In the Matter of the Claim of Kristen Rexford, Claimant,
v.
Gould Erectors & Riggers Inc., Respondents,
Special Fund for Reopened Cases, Appellant,
WORKERS' COMPENSATION BOARD, Appellant.

November 23, 2021

Facts: The common issue presented in these appeals is whether WCL § 25-a (1-a) forecloses the transfer of liability for a death benefits claim submitted on or after the statutory cut-off, regardless of the prior transfer of liability for a worker's disability claim arising out of the same injury. One claim was established for asbestosis, while the other was established for a heart attack. Liability in both claims had been timely transferred to the Special Fund pursuant to WCL § 25-a. Both claimants then died—after the January 1, 2014 § 25-a filing deadline—due to their causally related injuries. The carriers disputed liability for the death claims, and, after both claims were established, the Board found that the Special Fund was not responsible for the death benefits. The Appellate Division reversed the Board in both instances, concluding that the Special Fund was liable for the consequential death claims. The Special Fund appealed.

Holding: *Third Department Decisions Reversed.*

Discussion: Here, the plain text of WCL § 25-a (1-a) expressly provides that the statutory cut-off forecloses transfer of liability for “a claim” (emphasis added). The legislature's choice of the singular indefinite article—“a” claim—means the liability to be transferred is for a

single claim at the time of application. Thus, the statute prohibits the transfer of liability for any claim that has accrued on or after the cut-off date. Citing Matter of Zechmann v. Canisteo Volunteer Fire Dept, 85 NY2d at 753, it was noted that “the accrual date” of a death benefits claim “necessarily must be the date of the death giving rise to [the] claim” and that “a claim for death benefits . . . is a separate and distinct legal proceeding brought by the beneficiary’s dependents and is not equated with the beneficiary’s original disability claim.” Liability for a death benefits claim cannot have been transferred to the Special Fund along with liability for the disability claim because, “clearly, the cause of action for death benefits could not accrue prior to the death.”

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