

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (RET.)
MADGE E. GREENBLATT
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
JILLIAN A. SMITH
JONATHAN SO

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

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

Supreme Court, Appellate Division, Third Department, New York

Matter of EDMUND PASSERO, Claimant

v

UNINSURED EMPLOYERS' FUND, Appellant

and

J. WILLIAM PUSTELAK INC., et al., Respondents

and

WORKERS' COMPENSATION BOARD

Decided October 5, 2017

Facts: In April 2012, the claim was established for an occupational disease, the date of disablement was set, there was finding of the proper employer and that the State Insurance Fund was the proper carrier. There was also a finding that the State Insurance Fund properly cancelled their policy and they were removed and discharged. In December of 2014, the WCLJ found 2009 to be the date of contracture and apportioned liability for the claim between three employers. One of those employers was found to be uninsured on the date of disablement. The Uninsured Employer's Fund appealed from the 2014 decision. The Board found that the appeal was untimely because an appeal was not filed to the 2012 decision.

Holding: *Reversed.*

Discussion: The Court found that the appeal was timely because in 2012, the UEF did not have standing to file an appeal. In the 2012 decision, there was never a finding that UEF was liable for the uninsured employer. Therefore, their appeal from the 2014 decision was timely and the case was remitted to the Board.