

STEWART, GREENBLATT, MANNING & BAEZ

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
JONATHAN SO

ATTORNEYS AT LAW
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

In the Matter of MICHELE BUCCINNA, Appellant
v.
PEMBROKE CENTRAL SCHOOL DISTRICT, et al., Respondent

and

GENESEEE COUNTY SELF-INSURANCE PLAN, Appellant.

WORKERS' COMPENSATION BOARD, Respondent.

Decided October 11, 2018

Facts: The claimant, a school bus monitor, filed a claim for workers' compensation benefits, alleging injuries from going over a bump in the road while on the school bus. The WCLJ found the case compensable and this was affirmed by the Board Panel on appeal.

Holding: *Affirmed.*

Discussion: Whether a compensable accident occurred is a question of fact to be resolved by the Board and will be upheld with substantial evidence. In this case, the claimant testified that the school bus hit a bump while driving through a construction area, causing her to be lifted off the seat and come back down on the metal framework on the side of the seat. The claimant testified she reported the incident to her supervisor when the bus returned to the garage. The bus driver confirmed that she did hit a bump while going through a construction area and the supervisor testified that although the claimant told her about this incident, the claimant didn't mention she was injured. The claimant's treating physician testified to a causal relationship and apportioned 66% of the claimant condition to the current incident with the balance attributable to her prior back injury. The Court found that

although there was testimony that questioned the veracity of the claimant's testimony, the carrier failed to rebut the statutory presumption under Section 21 of the WCL and that the Board's decision was supported by substantial evidence.

Stewart, Greenblatt, Manning & Báez