

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 LINDA DUNCAN, as widow of WILLIAM DUNCAN, deceased, Claimant
v.
CRUCIBLE METALS., et al., Respondent

and

NEW HAMPSHIRE INSURANCE COMPANY, Appellant.

WORKERS' COMPENSATION BOARD, Respondent.

Decided October 11, 2018

Facts: The claimant applied for workers' compensation death benefits after her husband died of lung cancer allegedly caused by asbestos exposure. New Hampshire Insurance, who provided workers' compensation insurance for the Crucible Industries, Inc., failed to appear at any hearings. The case was established in a Notice of Decision dated 11/18/15 and penalties were issues for non-payment of the awards in a subsequent decision of 2/11/16. On 3/8/16, New Hampshire Insurance filed an appeal from both decisions stating that they were not the proper carrier as they only provided coverage for Crucible Industries, Inc., and not Crucible Metals. The Board Panel deemed the carrier's appeal untimely and the request for Full Board Review was denied

Holding: *Affirmed.*

Discussion: The carrier only appealed from the denial of the application for Reconsideration/Full Board Review and therefore, the Court's inquiry was limited to whether the denial was arbitrary and capricious or otherwise constituted an abuse of discretion. In order to obtain review or reconsideration, the party seeking same must demonstrate that newly discovered evidence exists, that there

has been a material change in condition, or that the Board improperly failed to consider the issues raised. In this case, there was no indication that the Board failed to consider the evidence when determining the timeliness of the carrier's appeal.

Stewart, Greenblatt, Manning & Báez