

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW

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

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

Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Monica Hidalgo BENAL, Claimant,

v.

NEW YORK APPLE CAR SERVICES, Appellant,

and

NEW YORK BLACK CAR OPERATORS, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

October 27, 2022

Facts: The decedent, a tax cab driver, was dispatched to a location whereupon he was stabbed to death. A claim was filed, listing NY Apple Car Service (NYACS), the entity who dispatched the decedent to the location, as the employer. NYACS is a member of the ILDBF, which is charged with providing compensation to injured workers under Executive Law article 6-G. The vehicle that the claimant was driving was registered to a different individual that was affiliated with an entity that was a member of the New York Black Car Operators Injury Fund (NYBCOICF). NYACS and its ILDBF carrier controverted the claim, contending that the claimant was working as a black car operator at the time of the accident. Both the Judge and the Board concluded that the decedent was working as an independent livery driver and that the responsible carrier was therefore the ILDBF carrier. ILDBF appealed.

Holding: *Affirmed.*

Discussion: The ILDBF is charged with providing benefits under the WCL for injuries or deaths resulting from a crime committed against the livery driver. Under Executive Law §160-aaa, an "independent livery driver" is "a livery driver that is dispatched by an independent livery base" and "covered services" include "all dispatches from a livery base regardless of where the pick-up or discharge occurs." Under Executive Law article

6-F, a black car operator is defined as “the registered owner of a for-hire vehicle, or a driver designated by such registered owner to operate the registered owner’s for-hire vehicle as the registered owner’s authorized designee.” There is no dispute that the claimant was dispatched by NYACS, which is a “livery, licensed under the NYC Taxi and Limousine Commission,” and there is no dispute that the decedent was engaged in a covered service at the time of the incident insofar as he was dispatched to transport a passenger. The Court noted that the ILDBF was established for the purpose of providing compensation to livery drivers who are injured while on dispatch from independent livery bases with which they do not have an employment relationship, whereas the NYBCOICF “is a separate entity that provides compensation to black car operators who are injured while on dispatch from central dispatch facilities that are registered as its members.” The Court concluded that even though the decedent’s vehicle was affiliated with a black car base, because the claimant was not driving on behalf of the NYBCOICF-affiliated base at the time of the incident, and because such base did not dispatch the call, he was an independent livery driver thus covered under the ILDBF policy.

Stewart, Greenblatt, Manning & Appel