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Supreme Court, Appellate Division, Third Department, New York

In the Matter of

THOMAS M. HORVATH, Appellant
v
MEGA FORKLIFT et al, Respondents
and
WORKERS' COMPENSATION BOARD

Decided October 3, 2019

Facts: The claimant, the employer's owner, was involved in a MVA on March 13, 2015 and claimed an injury to his right shoulder. The claimant sought treatment and underwent surgery. However, the claimant admitted that he did not provide notice to the workers' compensation carrier until February 2017. The WCLJ found the claimant did not comply with Section 18 and the claim was disallowed. The Board Panel affirmed.

Holding: Affirmed.

Discussion: WCL Section 18 requires that written notice be provided within 30 days after the accident causing the claimed injury. When the claimant is an officer of the employer, notice must be provided to the workers' compensation insurance carrier. The Board and Court also found that there was prejudice in the significant delay as the carrier was prevented from properly investigating the claim and deprived them of the right to have the claimant examined by an independent medical examiner prior to surgery.