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OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

In the Matter of MIKHAIL PINKHASOV, Respondent

v.

AUTO ONE INSURANCE, Respondent

and

Fidelity and Deposit Company of Maryland c/o Zurich American Insurance, Appellant and

and

WORKERS' COMPENSATION BOARD, Respondent

June 23, 2016

Facts: The claimant was involved in a motor vehicle accident while driving a company car. His claim was established for work-related injuries to the neck, back, right shoulder and right knee. In 2009 a stipulation was entered wherein there was a finding of schedule loss of use to the right arm and right leg. The claimant's lower back pain then worsened. He had surgery of the lumbar spine on May 16, 2011 and again on July 15, 2011, both which were covered by private insurance. The case was reopened based on a change of medical condition. In March, 2012 the claimant's treating physician sought authorization to perform lumbar fusion surgery and the authorization was granted. Additional proceedings were then conducted by the Workers' Compensation Law Judge at which time there was a dispute regarding causal relationship between the accident and the medical treatment that followed the closure of the case. The Judge awarded the claimant temporary total disability benefits subsequent to the lumbar fusion surgery. The Board Panel upheld the Workers' Compensation Law Judge's decision and the carrier appealed.

Holding: Decision reversed and remitted to Workers' Compensation Board for further proceedings.

Discussion: The Court noted that the authorization for the surgery was granted pursuant to an Order of the Chair, which is not appealable. However, that is not dispositive of the issue of causal relationship. The Court noted that upon review of the record in this matter, there was an absence of competent medical evidence establishing a causal relationship between the claimant's medical condition at the time of the surgeries and the January 19, 2006 accident.

The Court found that the Board Decision awarding the claimant temporary total disability benefits was not supported by substantial evidence.

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