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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of EDUARDO RIVERA, Claimant,
v.
SUPERIOR LAUNDRY SERVICES, LLC, Respondent,

and

GUARANTEE INSURANCE COMPANY, Appellants.

WORKERS' COMPENSATION BOARD, Respondent.

September 29, 2016

Facts: The claimant was an employee of Brand Management Services, doing business as County Agency, a professional employer organization that assigned or leased claimant's services to its client employers. After his services with County Agency ended on 5/2/12, the claimant was employed directly by one of County Agency's client employers, Superior Laundry Services. In September of 2012, the claimant was injured at work. The case was controverted by Guarantee Insurance Company, the carrier for Brand Management Services. The case was controverted on the grounds that the policy did not provide insurance coverage to the employer for its own direct employees and because the policy was cancelled in August of 2012 based upon non-payment of premiums, prior to the claimant's injury. The WCLJ determined that the carrier's policy covered the employer and that the policy was not properly cancelled due to the carrier's failure to comply with Section 54(5). The Board Panel affirmed

Holding: Reversed and remitted to the Worker's Compensation Board for further development.

Discussion: While the Board correctly determined that the carrier did not provide proper notice of its cancellation of the policy, the Board failed to address the threshold question of whether the policy at issue provided workers' compensation insurance coverage to the employer

at the time of the claimant's accident. The Court noted that Superior Laundry Service was not included in the schedule of additionally insured entities under the carrier's insurance policy issued to Brand Management Services. According, the Board erred in finding that Guarantee Insurance Company was the proper carrier and discharging UEF.