STEWART, GREENBLATT, MANNING & BAEZ

DONALD R. STEWART
MADGE E. GREENBLATT
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
MICHAEL H. RUINA
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER

LISA LEVINE
ASHA V. EDWARDS
ANDREA L. De SALVIO
KRISTY L. BEHR
DAVID S. FOODEN
LUKE R. TARANTINO
THOMAS A. LUMPKIN

ATTORNEYS AT LAW
6800 JERICHO TURNPIKE
SUITE 100W
SYOSSET, NY 11791

516-433-6677
FAX 516-433-4342

KAFI WILFORD (2003-2010)

RAYMOND J. SULLIVAN
MONICA M. O'BRIEN
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of MICHAEL SCUDERI, Respondent,
v.
MAZZCO ENTERPRISES et al., Respondents,

and

JD CONSULTING LLC et. al., Appellants.

WORKERS' COMPENSATION BOARD, Respondent.

May 5, 2016

Facts: Claimant was employed as a union carpenter for different employers from 1998-2009. Claimant was employed by JD Consulting LLC from 1999-2002. Claimant filed a worker's compensation claim for bilateral carpal tunnel syndrome caused by his occupation. The Worker's Compensation Law Judge ("WCLJ") established the claim for an occupational disease with a date of disablement set on June 25, 2010. Pursuant to Worker's Compensation Law ("WCL") Section 44, the carrier for his last employer, Mazzco Enterprises sought to apportion liability among his prior employers. The Workers Compensation Board ultimately set the date of contracture to be August 14, 1998 and apportioned 45% of liability to JD Consulting and it carrier. JD Consulting and it carrier appealed.

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

Discussion: "In determining whether a claim should be apportioned between previous employers in the same field, the relevant focus is whether the claimant contracted an occupational diseased while employed by that employer." Claimant testified that he was not diagnosed with or treated for carpal tunnel syndrome until 2010 and although he complained of

soreness intermittently in his hands throughout his employment as a union contractor, he never sought treatment for it prior to 2010. Therefore, the limited evidence cannot rationally lead to the date of contraction selected by the Board and its determination is unsupported by substantial evidence and must be reversed.