

STEWART, GREENBLATT, MANNING & BAEZ

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

ATTORNEYS AT LAW
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 Warren HUGHES, Appellant,
v.
MID HUDSON PSYCHIATRIC CENTER et al., Respondents
and
Workers' Compensation Board, Respondent.

September 2, 2021

Facts: Both the claimant's and carrier's doctors agreed that the claimant had a 45% SLU of the leg. However, the disagreed about the amount of apportionment that was applicable to the claimant's prior non work-related surgeries to the knee from 1976. The Board eventually determined that the claimant's prior injuries would have resulted in a 17.5% schedule loss of use and that should be the basis of the apportionment. The claimant appealed.

Holding: *Modified, to the extent that apportionment was found to apply, and remitted to the Board.*

Discussion: Despite a prior injury to the right leg that resulted in six (6) surgeries, the court observed that there were no medical records or operative reports documenting the prior injury or the related surgeries in the record. Additionally, there was no objective documentation indicating to what extent, if any, that claimant's use or range of motion of the knee was impaired prior to the work-related injury.

The court held that in light of the lack of supporting medical evidence, the Board's finding that apportionment is applicable because the prior injury would have resulted in a SLU is not supported by substantial evidence and must be reversed.