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Supreme Court, Appellate Division, Third Department, New York

Matter of PATRICIO CORTES, Claimant,

v.

EAGLE SYSTEMS, INC., Respondent,

and

XL SPECIALTY INSURANCE, Respondent,

and

ZURICH AMERICAN INSURANCE COMPANY, Appellant.

WORKERS' COMPENSATION BOARD, Respondent.

Decided September 14, 2017

Facts: Claimant, a truck driver, was injured in a motor vehicle accident and applied for workers' compensation indicating that Eagle Systems, Inc. was his employer. Investigations determined that XL Specialty Insurance was Eagle Systems' workers' compensation carrier and they were put on notice. However, they failed to appear at scheduled hearings. Instead, Zurich American Insurance Company, who was not the workers' compensation carrier and was not on notice, submitted a prehearing conference statement and appeared at a May 28, 2015 hearing. At said hearing Zurich argued that claimant was an independent contractor and not entitled to workers' compensation benefits. The WCLJ noted the absence of XL Specialty Insurance and lack of any claim directed against Zurich. The WCLJ found claimant was an employee of Eagle Systems, XL Specialty was the proper carrier and the claimant sustained compensable work-related injuries. Zurich filed an application for Board review asserting that it would ultimately be liable for any workers' compensation award due to a contingency liability policy purchased by Eagle Systems and therefore had standing to challenge the WCLJ's decision. The Board disagreed and Zurich appealed.

Holding: *Affirmed.*

Disposition: “Application for review to the Board may only be made by the parties to the claim (see Workers’ Compensation Law §23) “who are normally the injured employee and the employer or his [or her] workers’ compensation carrier” (citations omitted)”. Here, Zurich was not the carrier, was not on notice and attempted to appear unbidden. Zurich’s liability was not to claimant, but involved contingency liability purchased by Eagle Systems, a contractual issue that is beyond the jurisdiction of the Board. Zurich relied on cases involving no-fault insurance carriers, who have a regulatory right to participate in similar circumstances, which were inapplicable. The Board correctly determined that Zurich lacked standing.

*Stewart, Greenblatt, Manning & Baez*