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## Case Update

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### **Cancellation of Coverage**

Davis v. Yassien Mobility Assistance & Ambulance, Inc., A-0356-14T3 (App. Div. May 5, 2015)

**Facts:** Petitioner filed a claim against Respondent for an accident on April 23, 2007. Respondent filed an Answer stating it had no insurance coverage. The UEF was joined as an additional party. Respondent had previously obtained insurance through Zurich, but it was cancelled March 2006.

**Rule:** Case law indicates the requirements of N.J.S.A. 34:15-81 must be strictly followed. N.J.S.A. 34:15-81 requires that the notice of cancellation be filed in the Office of the Commissioner of Banking and Insurance, together with a certified statement that the notice provided for in the statute has been given. The Supreme Court of New Jersey in Sroczyński v. Milek, 197 N.J. 36 (2008) stated that even a minor deviation such as not filing the certified statement will void the cancellation.

**Application:** In this case, Zurich failed to properly cancel the policy because it did not file the certified statement with the Office of the Commissioner of Banking and Insurance. As such, cancellation was improper and respondent did have coverage.

However, the first time Respondent raised this issue was in 2013, seven years after the accident.

**Holding/Ruling:** The Judge of Compensation found that Zurich had improperly cancelled the insurance policy and was on the hook. On Appeal, the Appellate Division reversed and held Respondent waived its argument for improper cancellation by waiting seven years.

## Order for Dismissals- Exception to the Rules

Kost v. GPU Energy, A-0858-13T3 (App. Div. 2015)

**Facts:** The facts in this case are rather unusual and the petitioner's attorney's actions, egregious. In 2003, petitioner filed seven claims against his employer, respondent, GPU Energy/JCP&L. Petitioner's former attorney, Eric Lentz, Esq. of Garces and Grabler, P.C., filed each of these claims on petitioner's behalf. Lentz also represented petitioner, as a named defendant, in a parallel civil action spanning 2003 through 2008.

In March 2005, Lentz left Garces and Grabler, but remained petitioner's attorney of record. Between 2005 and 2008, Lentz failed to comply with various requests made by the Workers' Compensation Court. On December 5, 2008, the workers' compensation judge granted respondent's Motion to Dismiss for Lack of Prosecution, without prejudice. On December 8, 2008, respondent's counsel sent Lentz a copy of the Order of Dismissal. Petitioner was never notified that his cases had been dismissed.

Petitioner attempted to contact his attorney on numerous occasions without success. Eventually, the attorney told him his cases were progressing and told him to attend an IME. (This was January 2010). When petitioner arrived at the doctors' office, there was neither a record of an appointment, nor any paperwork received from Lentz. Lentz did not tell petitioner of the Order for Dismissal.

Petitioner then sought and obtained new counsel, who contacted Lentz. Unfortunately for petitioner, Lentz failed to sign substitutions of attorney, or to turn over the files at that time. Eventually, however, new counsel ascertained that the cases were dismissed and he filed a motion to restore them on August 5, 2010. He was finally able to effectuate a substitution of attorney on October 12, 2010.

**Rule:** N.J.S.A. 34:15-54 states that a petition for reinstatement, upon good cause shown, must be made within one year.

**Application:** The Appellate Division recognized that compensation judges possess the inherent power to excuse the one-year time bar pursuant to Rule 4:50-1, which provides that a court may vacate a judgment for "any other reason justifying relief from the operation of the judgment or order." In other words, judges have discretion to achieve equity and justice.

Court previously enumerated factors to be considered in determining if an attorney's conduct constituted exceptional circumstances: (1) the extent of the delay [between dismissal and the motion to re-open]; (2) the underlying reason or cause; (3) the fault or blamelessness of the litigant; and (4) the prejudice that would accrue to the other party.

**Holding/Ruling:** Judge of Compensation was reversed and case was remanded for the Order to be vacated. Court felt that there was no prejudice to respondent and that the situation was such that petitioner needed relief.

## Commutation of Settlement

Jenkins v. L.A. Fitness, A-3570-12T2 (App. Div. February 4, 2015).

**Facts:** The petitioner received an award pursuant to an Order Approving Settlement. He had about \$28,000 left in his award and wanted a lump sum payment of \$16,000. The special request was made to Judge Dietrich. Petitioner explained he wanted to build up his mother's catering business. He indicated, however, that the business had few customers and he needed to pay some of his mother's debts.

**Rule:** *N.J.S.A. 34:15-25*, which provides, in part: "Commutation is to be allowed only when it clearly appears that an unusual circumstance warrants a departure from the normal manner of payment and not to enable the injured employee . . . to satisfy a debt, or to make payment to physicians, lawyers or others."

**Application of Rule:** Applying this standard, Judge Dietrich rejected the request for commutation concluding that this "would be throwing good money after bad." She further found that the petitioner did not have a sound business plan and had managed to get over-extended financially.

**Holding/Ruling:** The Appellate Division reviewed the judge's decision for abuse of discretion and affirmed the Judge's decision denying the request for Commutation.

**Note:** Commutations are permitted only in unique situations as the Judge attempts to do what is in the petitioner's best interests.