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Central Jersey Claims Association Legal Update

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Wake v. Township of Toms River, A-5876-13T2 (App. Div. September 16, 2015)

(Total Knee Replacement after knee surgery)

Facts: Petitioner received an award for the knee following a surgery to remove the posterior horn and the entire middle portion of the lateral meniscus. Petitioner had preexisting arthritis in the knee. Award indicated petitioner had an “acute exacerbation of bi-compartmental degenerative joint disease.” Thereafter, petitioner reopened his claim petition seeking additional treatment. Respondent denied treatment indicating treatment was for pre-existing arthritis.

Respondent’s Expert: Respondent’s expert found petitioner would be suffering from the same symptomology had the work-related injury not occurred.

Court Findings: Judge Allen felt that petitioner’s knee was degenerative in nature and the petitioner’s deterioration of the knee was based solely on his advanced arthritis, and was unaffected by the meniscal repair surgery. Worker’s Compensation Judge dismissed claim petition.

Appellate Court Findings: The Court found there was sufficient credible evidence to support the workers’ compensation judge’s decision.

Rajpaul v. McDonald’s Corporation, A-4681-13T4 (App. Div. August 28, 2015)

(Occupational Exposure Claims)

Facts: Petitioner worked as a maintenance person for McDonalds from August 1995 to November 2005. He had pain in his shoulders, wrists, and elbows in 1999. In 2001, he was diagnosed with bilateral bicipital tendonitis. In 2006, he was diagnosed with a left shoulder rotator cuff tear and had surgery. Subsequently, he filed the workers’ compensation claim against McDonalds claiming the injury was occupational in nature.

Respondent's Arguments: Respondent filed a Motion to Dismiss petitioner's claim as asserting petitioner failed to file within two years from when he knew the nature of his condition was related to work. (N.J.S.A. 34:15-34).

Court Findings: Workers' Compensation Judge agreed with respondent. He felt the case was similar to Huntoon v. Borough of Clementon (involving occupational bilateral carpal tunnel claim).

Appellate Court Findings: The appellate court agreed with petitioner. While petitioner knew he had tendonitis as early as 2001, he did not know he had a torn rotator cuff until 2006. Therefore, the knowledge of the tendonitis did not trigger the statute of limitations under N.J.S.A. 34:15-34.

Keller v. Township of Berkeley, A-5767-12T3 (June 22, 2015)

(Workers' Compensation is Exclusive Remedy for Injured Workers)

Facts: Plaintiff worked as a laborer for the Township sanitation department and fell from a moving garbage truck after the passenger-side door suddenly opened. This had happened multiple times and there were multiple complaints about the door latch system not functioning well, but the Township failed to repair the problem. Township argued no OSHA violations were ever issued.

Trial Judge: Granted summary judgment by dismissing law suit. He applied 2-prong test:

- 1) There was evidence the door was defective and defendant was aware of problem but did nothing to fix the problem. (A jury could find the defendant was negligent).
- 2) NOTWITHSTANDING the above, those facts were insufficient to infer defendant's conduct was intentional AND that defendant knew their actions were substantially certain to result in injury or death to an employee. Mere knowledge and appreciation of risk is insufficient.

Appeal: Appellate Court affirmed trial judge's dismissal of the claim. It indicated the unfortunate accident that Keller suffered did not satisfy the substantial certainty standard required to vault the exclusivity bar.

It also agreed that plaintiff's claim for fraudulent concealment of evidence and spoliation of evidence was properly dismissed. The Court felt there no showing that defendant intentionally withheld, altered or destroyed the evidence with purpose to disrupt the litigation as required by case law.