

DCA Case Law Updates – January 2014

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Workers' Compensation

Christopher v. Joseph T. Hardy & Sons, IAB No.: 1318548 (Dec. 9, 2013).

The Industrial Accident Board denied a Claimant's Petition to Determine Additional Compensation Due and concluded that a proposed lumbar fusion surgery was not reasonable and necessary.

Claimant sustained a compensable lumbar spine injury on October 29, 2007. Claimant's course of post-injury medical care included selective nerve root blocks, lumbar epidural injections and a L2-3 laminotomy and microdiscectomy (and subsequent repair surgery). This medical treatment was not contested.

However, Claimant continued to experience ongoing lumbar symptomology, including pain and left lower extremity numbness. Claimant's physician was concerned about continuing L2-3 pathology and recommended a surgical consultation. Diagnostic testing revealed chronic L3 radiculopathy and retrolisthesis. The neurosurgical consultation concluded that an L2-3 fusion would be appropriate and indicated, given Claimant's ongoing pain complaints.

Employer contested that surgery was medically indicated and contended that the surgery would not be beneficial to the claimant. Employer's medical expert pointed to Claimant's complications from the two prior procedures and testified that there was significant risk of additional scar tissue which could increase the possibility of nerve damage. Further, Employer's expert testified that the L2-3 level was not unstable and that the claimant demonstrated good physical function.

Ultimately, the Board determined that the surgery was not reasonable in this case. The Board focused on the prior poor surgical outcomes and pointed to the Claimant's general physical condition and concluded that the current symptomology was not debilitating. The Board also acknowledged that some of Claimant's complaints were clearly unrelated to the L2-3 level and was particularly concerned about the risk of harm to Claimant's adjacent levels, should the proposed surgery have been performed. As a result of these concerns, the Board denied Claimant's petition.

Gondek v. Easy Money Group, C.A. No.: N13A-04-008 FSS (Del. Super. Ct. Dec. 27, 2013).

The Industrial Accident Board denied a Claimant's Petition to Determine Compensation Due, concluding that her injury occurred outside the course and scope of her employment. On appeal, the Superior Court affirmed the Board's decision.

Claimant was employed at a retail establishment on Concord Pike in Wilmington, Delaware. As part of her job duties, she frequently had to make bank deposits at a financial institution on Concord Pike in Wilmington, Delaware. On the date in question, after completing the bank deposit, Claimant was involved in a motor vehicle accident while traveling on Concord Pike.

Claimant filed a Petition to Determine Compensation Due, alleging that she was injured within the course and scope of employment and thus, she sustained a compensable work accident. Employer contested that the injury was work-related. The facts of the case were stipulated to by the parties and the matter came before the Board solely on whether there injury was sustained within the course and scope of employment.

At the Board, Claimant testified that she had made the bank deposit and was heading home when the accident occurred. Claimant contended that because she had not yet resumed her normal route home, when the accident occurred, that but for her work-related trip to the bank, the accident would not have occurred. In the alternative Claimant contended that the trip was covered under the "special errand" exception of the going and coming rule. Employer argued that the Claimant's work-related duties had concluded with the completion of the bank deposit and Claimant was not continuing her work-related duties after she left the bank (she was not paid for this time, nor was she returning to the place of employment). Accordingly, Employer contended that the accident fit squarely within the going and coming rule of non-compensability.

The Board concluded that the accident was outside the course and scope of employment. Significantly, the Board made a factual finding that Claimant's journey to the bank was a routine trip. The Board's ruling was appealed to the Superior Court.

The Superior Court affirmed, holding that there was insufficient evidence under a contract interpretation to conclude that the journey was an essential element of the employment relationship and further that the journey did not have the requisite exigency to be subsumed with the "special errand" exception.

Civil

Elia v. Hertrich Family of Auto. Dealerships, 2013 WL 6606054 (Del. Super. Ct. Dec. 13, 2013)

Delaware Superior Court determines that it lacks Subject Matter Jurisdiction where the parties entered into a valid and enforceable agreement to arbitrate

In this suit, Plaintiff alleged that she went to the Defendant for the express purpose of purchasing a four wheel drive vehicle. Plaintiff alleged that the Defendant presented and sold the Plaintiff a vehicle that was two wheel drive, telling her it was four wheel drive. Plaintiff later determined that the vehicle was actually two wheel drive. In the process of purchasing the

vehicle, Plaintiff executed a Retail Installment Sales Contract. The Retail Installment Sales Contract included a provision for all disputes to be resolved through binding arbitration.

Plaintiff filed suit in the Superior Court alleging, among other things, violations of the Magnuson Moss Warranty Act and Delaware Consumer Fraud statutes. In response, Defendant filed a motion to dismiss the Plaintiff's complaint arguing that the binding arbitration provision of the Retail Installment Sales Contract prevented the Superior Court from exercising subject matter jurisdiction over the lawsuit. The Defendant also argued that the Magnuson Moss Warranty Act was inapplicable because the fact that the vehicle was two wheel drive versus four wheel drive was not a "defect" that would be covered by the vehicle's warranty. Furthermore, Plaintiff was not alleging that the Defendant failed and/or refused to make necessary repairs pursuant to the vehicle's warranty.

The Superior Court agreed that the Magnuson Moss Warranty Act did not apply because Plaintiff was not claiming a defect in the vehicle but rather the misidentification of the vehicle. The Superior Court stated that the misidentification was not a defect because it was still fit for its particular purpose, i.e. transportation. The Superior Court then held that where the parties had entered into a valid and enforceable agreement to arbitrate disputes, it lacked subject matter jurisdiction over Plaintiff's complaint. Therefore, the Superior Court granted Defendant's motion to dismiss.

Helm v. 206 Massachusetts Ave., LLC, 2013 WL 6591544 (Del. Super. Ct. Dec. 12, 2013)

Delaware Superior Court grants Defendant's Motion for Summary Judgment based on comparative negligence and primary assumption of the risk

In this suit, the Plaintiff suffered a significant ankle fracture, requiring surgery, when she fell down the stairs at a beach rental in Lewes, Delaware. In Plaintiff's complaint, she alleged that the Defendant/Property Owner was negligent in failing to provide adequate lighting of the stairwell. Plaintiff further alleged that her fall was caused by the poorly lit stairwell. Plaintiff later amended her complaint to include allegations that the banister in the stairwell was not "graspable" or code compliant and therefore prevented her from stopping her fall. Plaintiff had rented this same property for week long vacations in the two prior years to her fall and never lodged any complaints regarding the condition of the property.

At Plaintiff's deposition, she testified that as she approached the stairs, she noticed that it was extremely dark toward the bottom. Plaintiff further testified that she attempted to turn on the light in the foyer at the bottom of the stair, but there was no light switch on the second floor that controlled the first floor lights. Most importantly, Plaintiff testified that she was aware, at the time just prior to descending the stairs, that they were unsafe because of the darkness. When asked why she did not have a family member assist her in descending the stairs, she testified that she did not want to expose them to the risk of descending the stairs in the dark. Despite recognizing the risk, Plaintiff descended the stairs. Plaintiff then testified that approximately

two-thirds of the way down the stairs she paused because it became increasingly harder to see the stairs in front of her due to the darkness. Instead of turning around, Plaintiff continued down the stairs and ultimately fell, causing her injuries.

Defendant filed a Motion for Summary Judgment arguing that based on Plaintiff's testimony, it was clear that she was aware of the risk of descending the dark stairwell, that she appreciated that risk, and proceeded despite that risk. Therefore, Defendant argued, Plaintiff assumed the risk of falling and would not be entitled to recover from the Defendant for her injuries. In the Motion for Summary Judgment, the Defendant also argued that the Plaintiff's actions were negligent in an amount greater than 51%, which would bar recovery against the Defendant as a matter of law. In granting Defendant's Motion for Summary Judgment, the Superior Court agreed that Plaintiff was negligent in an amount greater than 51% as a matter of law and therefore could not recover from the Defendant. The Court also held that Plaintiff clearly recognized and appreciated the risk of descending the stairs and proceeded anyway. The Court held, therefore, the Plaintiff primarily assumed the risk, which precluded her from recovering damages for her injuries against the Defendant.