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Personal Injury Reversal Newsletter
June 2022

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ASSUMPTION OF RISK, SLIPPERY BASKETBALL COURT.

PLAINTIFF ASSUMED THE RISK OF SLIPPING ON THE BASKETBALL COURT WHICH WAS WET WITH CONDENSATION; PLAINTIFF WAS AWARE OF THE RECURRING CONDITION (SECOND DEPT).

Lungen v Harbors Haverstraw Homeowners Assn., Inc., 2022 NY Slip Op 03717, Second Dept 6-8-22

Practice Point: Plaintiff was aware that the basketball court routinely became wet with condensation. Therefore he assumed the risk of slipping on the condensation while playing basketball.

COURT OF CLAIMS, HARNESS RACING ACCIDENT.

THE NYS GAMING COMMISSION'S DUTIES TO INSPECT HORSES AND EQUIPMENT BEFORE A HARNESS RACE ARE PROPRIETARY, NOT GOVERMENTAL, IN NATURE; THEREFORE ORDINARY NEGLIGENCE PRINCIPLES APPLY AND THE IMMUNITY DEFENSE IS NOT AVAILABLE; DURING THE RACE A HORSE FELL AND CLAIMANT'S HORSE COLLIDED WITH THE FALLEN HORSE; THERE ARE QUESTIONS OF FACT ABOUT THE SAFETY OF THE FALLEN HORSE'S EQUIPMENT AND WHETHER THE HORSE EXHIBITED INDICATIONS HE WAS LAME; THERE ARE QUESTIONS OF FACT ABOUT THE APPLICABILTY OF THE ASSUMPTION OF THE RISK DOCTRINE; REGULATIONS RE: THE INSPECTION OF HORSES AND EQUIPMENT ALLOWED CONSTRUCTIVE NOTICE OF THE DANGEROUS CONDITION TO BE IMPUTED (THIRD DEPT).

Bouchard v State of New York, 2022 NY Slip Op 04202, Third Dept 6-30-22

Practice Point: This opinion has valuable discussions of; (1) how to analyze whether a government is exercising a governmental function (to which the "special relationship" and "governmental immunity" doctrines apply) or a proprietary function (to which ordinary negligence principles apply); (2) the assumption of the risk doctrine; and (3) the imputation of constructive notice when there are regulations mandating inspections which allegedly would have revealed the dangerous condition. Here claimant was injured during a harness race when his horse collided with a fallen horse. The complaint alleged the NYS Gaming Commission did not inspect the fallen horse and the fallen horse's equipment prior to the race as required by the relevant regulations.

EXPERT DISCLOSURE, TREATING PHYSICIAN, THIRD DEPARTMENT'S UNIQUE REQUIREMENTS.

CLAIMANT'S ATTORNEY WAS NOT AWARE OF THE THIRD DEPARTMENT'S UNIQUE REQUIREMENT OF FULL EXPERT-WITNESS DISCLOSURE FOR A TREATING PHYSICIAN; THAT WAS AN ADEQUATE EXCUSE FOR AN UNTIMELY DISCLOSURE (THIRD DEPT).

Freeman v State of New York, 2022 NY Slip Op 03559, Third Dept 6-2-22

Practice Point: Only the Third Department requires full expert-witness disclosure for a treating physician.

GENERAL MUNICIPAL LAW 207-1, FIREFIGHTERS, ARBITRATION.

THE MANNER IN WHICH THE FIREFIGHTER'S GENERAL MUNICIPAL LAW 207-A INJURY CLAIM SHOULD BE PROCESSED IS ARBITRABLE BECAUSE THE ISSUE IS ADDRESSED IN THE COLLECTIVE BARGANING AGREEMENT (CBA); THE PETITION TO STAY ARBITRATION SHOULD NOT HAVE BEEN GRANTED (SECOND DEPT).

Matter of City of New Rochelle v Uniformed Fire Fighters Assn., Inc., 2022 NY Slip Op 03722, Second Dept 6-8-22

Practice Point: Here the issue (how a firefighter's General Municipal Law 207-a injury claim should be processed) was addressed in the collective bargaining agreement (CBA) was therefore arbitrable. The petition to stay arbitration should not have been granted.

GENERAL MUNICIPAL LAW 207-A BENEFITS, FIREFIGHTERS.

A FIREFIGHTER INJURED ON THE JOB RETURNED TO THE JOB BUT COULD NOT WORK THE 10 TO 24 HOUR SHIFTS WHICH ARE THE “REGULAR DUTIES” OF A FIREFIGHTER; BECAUSE SHE WAS NOT OFFERED THE FULL-TIME EQUIVALENT OF THE SHORTER SHIFTS OR LIGHT-DUTY WORK, SHE WAS ENITLTED TO GENERAL MUNICIPAL LAW 207-A BENEFITS (FOURTH DEPT).

Matter of Newman v City of Tonawanda, 2022 NY Slip Op 03834, Fourth Dept 6-9-22

Practice Point: Here petitioner-firefighter was injured on the job. When she returned to the job she could not work the 10 to 24 hour shifts which are the “regular duties’ of a firefighter. She was assigned shorter shifts which resulted in less pay. She was therefore entitled to General Municipal Law 207-a benefits.

LABOR LAW-CONSTRUCTION LAW, FAILURE TO FOLLOW INSTRUCTIONS, SOLE PROXIMATE CAUSE.

QUESTIONS OF FACT ABOUT WHETHER PLAINTIFF WAS INSTRUCTED TO WORK ONLY ON GROUND LEVEL AND NOT TO USE STILTS, AND WHETHER THE SOLE PROXIMATE CAUSE OF THE ACCIDENT WAS PLAINTIFF’S CONTINUED USE OF THE STILTS AFTER HE FELT THEM BECOME UNSTABLE, PRECLUDED SUMMARY JUDGMENT ON THE LABOR LAW 240 (1) CAUSE OF ACTION (FIRST DEPT).

Gonzalez v DOLP 205 Props. II, LLC, 2022 NY Slip Op 03868, First Dept 6-14-22

Practice Point: Here, where plaintiff fell using stilts, evidence plaintiff was instructed to work only on ground level precluded summary judgment on the Labor Law 240 (1) cause of action. Plaintiff’s continued use of the stilts after he felt them

become unstable raised a question of fact whether plaintiff was the sole proximate cause of the injury.

LABOR LAW-CONSTRUCTION LAW, INJURY LIFTING A HEAVY OBJECT FOUR OR FIVE INCHES.

PLAINTIFF FELT HIS ARM SNAP WHEN ATTEMPTING TO LIFT A 400 POUND ELEVATOR PLATFORM FOUR OR FIVE INCHES TO PLACE A PALLET JACK UNDER IT; PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON HIS LABOR LAW 240(1) CAUSE OF ACTION SHOULD HAVE BEEN GRANTED (FIRST DEPT).

Schoendorf v 589 Fifth TIC I LLC, 2022 NY Slip Op 03580, First Dept 6-2-22

Practice Point: Even a height-differential of four or five inches can support a Labor Law 240(1) cause of action. Here plaintiff was attempting to lift a 400 pound elevator platform a few inches in order to place a pallet jack under it when he injured his arm.

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LABOR LAW-CONSTRUCTION LAW, PROXIMATE CAUSE.

IF PLAINTIFF, A FOREMAN, HAD THE AUTHORITY TO STOP WORK BECAUSE OF RAIN, THEN HIS CONTINUING TO WORK MAY HAVE BEEN THE SOLE PROXIMATE CAUSE OF HIS FALL; IF PLAINTIFF HAD BEEN INSTRUCTED TO WORK IN THE RAIN, THEN THE WET PLYWOOD MAY HAVE BEEN THE SOLE PROXIMATE CAUSE OF HIS FALL; BECAUSE OF THE CONFLICTING OR ABSENCE OF EVIDENCE ON THESE ISSUES, PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED; TWO JUSTICE DISSENT (THIRD DEPT).

Sutherland v Tutor Perini Bldg. Corp., 2022 NY Slip Op 04228, First Dept 6-30-22

Practice Point: Here the plaintiff was a foreman on a construction site. He was working in the rain when he slipped and fell on wet plywood. If plaintiff had the authority to stop work because of the rain, he may be deemed the sole proximate cause of his fall. If plaintiff was ordered to work in the rain, then the slippery plywood may be deemed to be the sole proximate cause of his fall. Because there was conflicting and/or a lack of evidence on these issues, plaintiff's motion for summary judgment should not have been granted.

LABOR LAW-CONSTRUCTION LAW, HOMEOWNER'S EXEMPTION.

HOMEOWNER'S EXEMPTION PRECLUDED THE LABOR LAW 240(1) AND 241(6) CAUSES OF ACTION AGAINST THE DEFENDANT PROPERTY OWNER, A RELIGIOUS ORGANIZATION; THE LABOR LAW 200 AND NEGLIGENCE CAUSES OF ACTION ALLEGING THE HOMEOWNER'S LADDER WAS DEFECTIVE PROPERLY SURVIVED SUMMARY JUDGMENT (SECOND DEPT).

Reinoso v Han Ma Um Zen Ctr. of N.Y., Inc., 2022 NY Slip Op 03755, Second Dept 6-8-22

Practice Point: The homeowner's exemption precludes Labor Law 240(1) and 241(6) causes of action against a homeowner which/who does not direct plaintiff's work, even if the homeowner is a religious organization. The homeowner's exemption does not apply to Labor Law 200 or negligence causes of action, here based on allegations the homeowner's ladder was defective.

LANDLORD-TENANT, LIABILITY FOR SHOOTING.

ALTHOUGH THE SPECIFIC CRIME, I.E., THE SHOOTING OF PLAINTIFF'S DECEDENT IN DEFENDANTS' BUILDING, MAY NOT HAVE BEEN FORESEEABLE, THE RELEVANT QUESTION IS WHETHER THE DOOR SECURITY WAS DEFICIENT AND THEREFORE WAS A CONCURRENT FACTOR IN THE SHOOTING (SECOND DEPT).

Carmona v Sea Park E., L.P., 2022 NY Slip Op 04149, Second Dept 6-29-22

Practice Point: In the Second Department, a landlord can be liable for a crime committed in the landlord's building if the door security system was deficient and was therefore a concurrent factor in the happening of the crime. The plaintiff need not demonstrate the specific crime, here the shooting of plaintiff's decedent, could have been foreseen by the landlord.

MEDICAL MALPRACTICE, EMOTIONAL DISTRESS, BIRTH.

MOTHER'S CAUSES OF ACTION FOR EMOTIONAL DISTRESS WOULD NOT BE AVAILABLE IF HER BABY WAS BORN ALIVE; THERE WERE QUESTIONS OF FACT ABOUT WHETHER THE BABY WAS BORN ALIVE OR STILLBORN; THEREFORE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED (SECOND DEPT).

Khanra v Mogilyansky, 2022 NY Slip Op 04160, Second Dept 6-29-22

Practice Point: Whether mother can recover for emotional distress in this medical malpractice action depended upon whether her baby was born alive or stillborn. There can be no recovery for mother's emotional distress if the baby was born alive. Because there were questions of fact about whether the baby was born alive, the defendants' motion for summary judgment should not have been granted.

MEDICAL MALPRACTICE, NEGLIGENCE, LIABILITY OF REHABILITATION SERVICE FOR RAPE AND KIDNAPPING BY CLIENT.

DEFENDANT REHABILITATION AND RECOVERY SERVICES DID NOT DEMONSTRATE IT DID NOT HAVE A DUTY TO PREVENT A PERSON UNDER ITS SUPERVISION AND CARE FROM HARMING MEMBERS OF THE GENERAL PUBLIC; PLAINTIFF WAS KIDNAPPED AND RAPED BY A PERSON WITH A VIOLENT PAST WHO WAS UNDER DEFENDANT'S CARE AND SUPERVISION (THIRD DEPT).

Doe v Langer, 2022 NY Slip Op 03957, Third Dept 6-15-22

Practice Point: Here defendant provided rehabilitative and recovery services for persons with mental illness and substance abuse problems. A person, with a violent past, was under defendant's care and supervision when he kidnapped and raped plaintiff. Defendant did not demonstrate that it did not have a duty to protect

members of the general public from a violent person under its care and supervision.

MEDICAL MALPRACTICE, NEGLIGENCE, PRECONCEPTION NEGLIGENCE, WRONGFUL LIFE.

IN NEW YORK THERE ARE NO CAUSES OF ACTION FOR “PRECONCEPTION NEGLIGENCE” OR “WRONGFUL LIFE;” HERE MOTHER ALLEGED THE DRUG SHE HAD BEEN TAKING FOR EPILEPSY BEFORE SHE LEARNED SHE WAS PREGNANT CAUSED THE BABY TO BE BORN WITH SPINA BIFIDA (FIRST DEPT).

Z.L. v Mount Sinai Hosp., 2022 NY Slip Op 04112, First Dept 6-23-22

Practice Point: New York does not recognize actions for “preconception negligence” or “wrongful life.” Here mother alleged the epilepsy drug she was taking until she learned she was pregnant caused her baby to be born with spina bifida. Both causes of action should have been dismissed.

MENTAL CONDITION IN CONTROVERSY, COMPEL INDEPENDENT MEDICAL EXAMINATION.

DEFENDANT'S MOTION TO COMPEL PLANTIFF TO APPEAR FOR A PSYCHIATRIC EXAMINATION (INDEPENDENT MEDICAL EXAMINATION [IME]) SHOULD HAVE BEEN GRANTED BECAUSE PLAINTIFF HAD PLACED HER MENTAL CONDITION IN CONTROVERSY; DEFENDANT'S MOTION TO VACATE THE NOTE OF ISSUE SHOULD HAVE BEEN GRANTED BECAUSE DISCOVERY WAS NOT COMPLETE (FIRST DEPT).

Lopez v Bendell, 2022 NY Slip Op 03990, First Dept 6-21-22

Practice Point: Plaintiff had placed her mental condition in controversy by testifying about depression, anxiety, dizziness and headaches caused by mental anguish. Defendant was therefore entitled to compel a psychiatric exam (an independent medical examination [IME]). Here defendant's motion to vacate the note of issue should have been granted because defendant's discovery was not complete.

MUNICIPAL LAW, LATE NOTICE OF CLAIM.

THE NOTICE OF CLAIM WAS SERVED ONLY FIVE DAYS LATE WHICH WAS DEEMED TIMELY NOTICE OF THE NATURE OF THE ACTION AND A SHOWING OF THE ABSENCE OF PREJUDICE; THE CITY DID NOT AFFIRMATIVELY DEMONSTRATE PREJUDICE; THE ABSENCE OF AN ADEQUATE EXCUSE WAS NOT FATAL; LEAVE TO FILE A LATE NOTICE OF CLAIM SHOULD HAVE BEEN GRANTED (SECOND DEPT).

Matter of Gabriel v City of Long Beach, 2022 NY Slip Op 04169, Second Dept 6-29-22

Practice Point: Here the notice of claim was served only five days late. The city was thereby deemed to have had timely notice of the nature of the claim and the

petitioner was deemed to have demonstrated a lack of prejudice. The fact that the petitioner did not have an adequate excuse was not a fatal defect. Leave to file a late notice of claim should have been granted.

PRODUCTS LIABILITY, LONG-ARM JURISDICTION.

PLAINTIFF, A TEXAS RESIDENT WHO WAS A FLIGHT ATTENDANT FOR 30 YEARS WITH MONTHLY STAY-OVERS IN NEW YORK, DEMONSTRATED NEW YORK HAD LONG-ARM JURISDICTION OVER THE NEW JERSEY COMPANY WHICH MANUFACTURED AND DISTRIBUTED TALCUM POWDER PLAINTIFF USED; THE TALCUM POWDER ALLEGEDLY CAUSED PLAINTIFF'S MESOTHELIOMA (FIRST DEPT).

English v Avon Prods., Inc., 2022 NY Slip Op 03571, First Dept 6-2-22

Practice Point: Even though plaintiff was a Texas resident and the company she was suing was based in New Jersey, she was able to sue using New York courts. Plaintiff was a flight attendant for 30 years with monthly stay-overs in New York. Defendant had an office in New York and marketed the talcum powder which allegedly cause plaintiff's mesothelioma nationwide.

SLIP AND FALL, ASSAULT AND BATTERY.

PLAINTIFF'S DEPOSITION TESTIMONY THAT HE DID NOT RECALL HOW OR WHERE HE SLIPPED AND FELL AND DID NOT RECALL A FIGHT OR BEING HIT WERE FATAL TO THE SLIP AND FALL AND ASSAULT CAUSES OF ACTION (SECOND DEPT).

Barnett v Fusco, 2022 NY Slip Op 04147, Second Dept 6-29-22

Practice Point: In a slip and fall case, the failure to recall the cause of the fall requires dismissal. In an assault and battery case, the failure to recall the fight or being hit requires dismissal.

SLIP AND FALL, EMPLOYMENT LAW, INDEMNITY, CONTRIBUTION.

PLAINTIFF'S EMPLOYER'S MOTIONS FOR SUMMARY JUDGMENT ON DEFENDANT'S CONTRACTUAL INDEMNITY, COMMON-LAW INDEMNITY AND CONTRIBUTION CAUSES OF ACTION SHOULD HAVE BEEN GRANTED; CRITERIA EXPLAINED (THIRD DEPT).

O'Toole v Marist Coll., 2022 NY Slip Op 03560, Third Dept 6-2-22

Practice Point: Defendant property owner's actions against plaintiff's employer for contractual and common law indemnity and contribution should have been dismissed because plaintiff's slip and fall was not the result of any act or omission on plaintiff's employer's part. The criteria for indemnity and contribution causes of action are explained.

SLIP AND FALL, EMPLOYMENT LAW, WORKERS' COMPENSATION.

DEFENDANT PROPERTY OWNER FAILED TO DEMONSTRATE IT WAS THE ALTER EGO OF PLAINTIFF'S EMPLOYER OR THAT PLAINTIFF WAS DEFENDANT'S SPECIAL EMPLOYEE; THEREFORE PLAINTIFF'S PERSONAL INJURY ACTION WAS NOT PRECLUDED BY THE EXCLUSIVE REMEDY ASPECT OF THE WORKERS' COMPENSATION LAW (SECOND DEPT).

Mauro v Zorn Realties, Inc., 2022 NY Slip Op 03509, Second Dept 6-1-22

Practice Point: Here the defendant property owner was not able to take advantage of the exclusive-remedy aspect of the Workers' Compensation Law in this personal injury action. Plaintiff's employer was not the alter ego of defendant and plaintiff was not defendant's special employee.

SLIP AND FALL, PROOF OF CAUSE.

DESPITE THE FACT THAT PLAINTIFF COULD NOT SAY WHICH OF TWO CRACKS IN THE PAVEMENT CAUSED HIS FALL, THE CAUSE OF THE FALL WAS SUFFICIENTLY IDENTIFIED TO WITHSTAND SUMMARY JUDGMENT (THIRD DEPT).

Bovee v Posniewski Enters., Inc., 2022 NY Slip Op 03561, Third Dept 6-2-22

Practice Point: Plaintiff was able to testify that one of two cracks in the pavement was the cause of his fall. The cause was sufficiently identified to withstand summary judgment.

SLIP AND FALL, TREE WELLS.

UNDER THE NYC ADMINISTRATIVE CODE, ABUTTING PROPERTY OWNERS ARE LIABLE FOR THE CONDITION OF SIDEWALKS BUT NOT CITY OWNED TREE WELLS, UNLESS THEY AFFIRMATIVELY CREATE THE DANGEROUS CONDITION, NEGLIGENTLY REPAIR THE AREA, OR CREATE THE DANGEROUS CONDITION BY A SPECIAL USE; HERE PLAINTIFF SLIPPED AND FELL BECAUSE OF THE CONDITION OF THE TREE WELL, NOT THE SIDEWALK, AND NONE OF THE OTHER LIABILITY THEORIES APPLIED (SECOND DEPT).

Ivry v City of New York, 2022 NY Slip Op 04157, Second Dept 6-29-22

Practice Point: Under the NYC Administrative Code, abutting property owners can be liable for a slip and fall due to the condition of the sidewalk, but not a city-owned tree well.

SLIP AND FALL.

A FLATTENED CARDBOARD BOX ON THE FLOOR WAS NOT ACTIONABLE IN THIS SLIP AND FALL CASE (SECOND DEPT).

DiScalo v Mannix Family Mkt. @ Forest & Richmond Ave, LLC, 2022 NY Slip Op 03708, Second Dept 6-8-22

Practice Point: A flattened cardboard box on the floor was not actionable in this slip and fall case because it was "open and obvious."

TRAFFIC ACCIDENTS, INSURANCE LAW, RESCISSION OF ARBITRATION AGREEMENT, UNILATERAL MISTAKE.

IN THIS VEHICLE ACCIDENT CASE, PLAINTIFF ENTERED AN ARBITRATION AGREEMENT WHICH INDICATED THE AWARD WOULD BE BETWEEN $0 AND $50,000, BUT THE POLICY LIMITS WERE $100,000/300,000; THE UNILATERAL MISTAKE BY PLAINTIFF'S ATTORNEY RE: THE POLICY LIMITS WAS NOT INDUCED BY DEFENDANT OR DEFENDANT'S CARRIER, THEREFORE RESCISSION OF THE AGREEMENT WAS NOT AN AVAILABLE REMEDY (SECOND DEPT).

Maynard v Smith, 2022 NY Slip Op 04017, Second Dept 6-22-22

Practice Point: A unilateral mistake by one party which was not induced by the other party is not a ground for rescission of a contract.

TRAFFIC ACCIDENTS, JOINT TRIAL.

PLAINTIFF'S TWO SEPARATE TRAFFIC ACCIDENTS SHOULD BE TRIED TOGETHER BECAUSE PLAINTIFF ALLEGED THE INJURIES FROM THE FIRST ACCIDENT WERE EXACERBATED BY THE SECOND ACCIDENT (SECOND DEPT).

Frank v Y. Mommy Taxi, Inc., 2022 NY Slip Op 04151, Second Dept 6-29-22

Practice Point: Here two separate traffic accidents should be tried together because plaintiff alleged the second accident exacerbated his injuries from the first accident.

TRAFFIC ACCIDENTS, MUNICIPAL LAW, RECKLESS DISREGARD, VEHICLE AND TRAFFIC LAW, POLICE CHASE.

PLAINTIFFS RAISED QUESTIONS OF FACT (1) WHETHER THE POLICE ACTED IN RECKLESS DISREGARD OF THE SAFETY OF OTHERS DURING A HIGH-SPEED CHASE AND IN FAILING TO NOTIFY THE DISPATCHER OF THE CHASE, AND (2) WHETHER THE CHASE WAS A PROXIMATE OR CONCURRENT CAUSE OF PLAINTFFS' ACCIDENT (THERE WAS NO CONTACT WITH EITHER VEHICLE INVOLVED IN THE CHASE) (FIRST DEPT).

Handelsman v Llewellyn, 2022 NY Slip Op 04093, First Dept 6-23-22

Practice Point: Here there were questions of fact whether the police acted in reckless disregard of the safety of others during a high-speed chase such that the city would be liable for plaintiffs' accident, and whether the high-speed chase was a proximate or concurrent cause of plaintiffs' accident (there was no contact with either vehicle involved in the chase). There were questions of fact whether the police drove "in reckless disregard of the safety of others" and whether their failure to notify the dispatcher of the chase was also reckless.

TRAFFIC ACCIDENTS, MUNICIPAL LAW.

IN THIS Y-INTERSECTION TRAFFIC ACCIDENT CASE, (1) THE TOWN DEMONSTRATED IT DID NOT HAVE THE REQUIRED WRITTEN NOTICE THAT OVERGROWN FOLIAGE BLOCKED LINES OF SIGHT; (2) QUESTIONS OF FACT PRECLUDED SUMMARY JUDGMENT ON THE CAUSES OF ACTION ALLEGING INADQUATE SIGNAGE AND NEGLIGENT ROADWAY DESIGN (THIRD DEPT).

Read v Bell, 2022 NY Slip Op 03563, Third Dept 6-2-22

Practice Point: In a traffic accident case, a municipality will not be liable for overgrown foliage which blocks lines of sight if the town has not been provided

with written notice of the condition. The written-notice requirement does not apply to causes of action alleging the accident was caused by inadequate signage or negligent roadway design.

WORKERS' COMPENSATION, INADEQUATE RECORD FOR APPEAL.

THE BOARD FAILED TO ADEQUATELY EXPLAIN ITS DECISION TO DENY COVERAGE OF MEDICAL BILLS ON THE GROUND THEY WERE NOT CAUSALLY RELATED TO CLAIMANT'S MEDICAL CONDITION, MAKING APPELLATE REVIEW IMPOSSIBLE; MATTER REMITTED (THIRD DEPT).

Matter of Sequino v Sears Holdings, 2022 NY Slip Op 04070, Third Dept 6-23-22

Practice Point: When the Workers' Compensation Board fails to adequately explain its denial of coverage for medical bills it concluded were not related to claimant's medical condition, appellate review by a court is not possible and the matter must be remitted.

WORKERS' COMPENSATION, SCHEDULE LOSS OF USE (SLU).

THE BOARD SHOULD HAVE CONSIDERED WHETHER A PRIOR ELBOW INJURY ADDED TO THE SCHEDULE LOSS OF USE (SLU) ASSOCIATED WITH THE SUBSEQUENT SHOULDER INJURY; THE BOARD DEPARTED FROM PRECEDENT WITHOUT EXPLANATION (THIRD DEPT).

Matter of Kromer v UPS Supply Chain Solutions, 2022 NY Slip Op 04072, Third Dept 6-23-22

Practice Point: Here claimant's prior schedule loss of use (SLU) award for an elbow injury was not considered in connection with the SLU for the subsequent shoulder injury, a departure from precedent. Because the departure from precedent was not explained, the decision was reversed and remitted.

WORKERS' COMPENSATION, SCHEDULE LOSS OF USE (SLU).

THE WORKERS' COMPENSATION BOARD MISINTERPRETED SPECIAL CONSIDERATION 4 TO LIMIT SCHEDULE LOSS OF USE (SLU) OF PLAINTIFF'S LEG TO 10% (THIRD DEPT).

Matter of Blue v New York State Off. Of Children & Family Servs., 2022 NY Slip Op 03565, Third Dept 6-2-22

Practice Point: In determining the schedule loss of use (SLU) for claimant's leg, the Workers' Compensation Board misinterpreted "special consideration 4" resulting in an inappropriately low SLU percentage.

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