

New Jersey Weekly Case Law Summary

Polanco v. Rockland Coaches, NJ App. Div. Docket, NO. A-o (September 23, 2013, Unpublished Decision)

In the case of *Polanco v. Rockland Coaches*, petitioner sustained injuries during the course of employment on November 1, 2007. The Judge of compensation awarded petitioner 50 percent of PT apportioning the disability 27½ percent PT for the right shoulder with a credit of 12½ percent for a prior award; 12½ percent PT for cervical spine and 15% PT for the lumbar spine. Respondent appealed this decision requesting the Appellate Division review the Judge's findings and reconsider the award for the right shoulder. The Appellate Division noted the standard of review "the factual findings of the compensation court are entitled to substantial deference. The Court reviewed the testimony and stated that they could not state that the award was excessive or inconsistent with the weight of the evidence. They cited the Supreme Court from *Sager v. O.A. Peterson* "this court may not engage in an independent assessment of the evidence as if it were the court of first instance...If an App. Div. court finds sufficient credible evidence in the record to support the agencies conclusions, that court must uphold those findings, even if the court believes that it would have reached a different result." Thus, the court would not question the Judge's findings here. The Court disagreed with the respondents assertion that the Judge failed to accurately portray the respondent's expert's findings. As such, they affirmed the Judge of compensations findings.

This decision highlights the power of the Workers' Compensation Judges when assessing awards for permanency. It results in the vast majority of claims settling before trial. The likelihood of reversing the Judge's "call" on permanency is very slim requiring an abuse of discretion.

Estate of Sellino v. Pinto Bros. Disposal, LLC, 2013 WL 5300076 (N.J. App. Div.)

The estate and widow, Phyllis Sellino, appealed from an order granting summary judgment, dismissing the complaint against Pinto Brothers Disposal, LLC as barred by the immunity provision of the Workers' Compensation Act. The Appellate Division affirmed.

On October 17, 2009, Samuel Sellino, a trash truck operator for Pinto Brothers Disposal, LLC (Pinto Brothers), was on route with Chris Pinto. Pinto was in charge of getting on and off the truck to collect the garbage. When stopped at one house, Sellino got out of the truck and left the truck in drive with the parking brake engaged. The truck began to roll forward. Sellino died when he fell under the truck wheels while attempting to stop the truck. It was undisputed that if Sellino had left the truck in neutral that the truck would not have rolled forward. The neutral relay had been bypassed by the employer.

The Plaintiffs argued that Pinto Brothers actions constituted an intentional wrong under the Act, removing the exclusivity bar of the Act. The Appellate Division analyzed the exclusive remedy provision of the Workers' Compensation Act, N.J.S.A. 34:15-8, whereby employees relinquished their right to pursue common-law remedies in exchange for automatic entitlement to benefits for work related injuries except for matters involving an intentional wrong. The Court noted that two conditions must be met to satisfy the intentional wrong exception to apply:

1. The employer must know that his actions are substantially certain to result in injury or death to the employee;
2. The resulting injury and the circumstances of its infliction on the worker must be (a) more than a fact of life of industrial employment and (b) plainly beyond anything the legislature intended the Act intended to immunize;

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(citing Laidlow v. Hariton Machinery Co., Inc., 170 N.J. 602, 617 (2002)).

The Court held that although the bypassing of the neutral relay created a risk of injury to the employees, it fell short of proving that the defendants acted with knowledge that such action was substantially certain to result in injury or death to the employee. Moreover, Sellino's own negligence in leaving the vehicle in drive contributed to his fatal accident. As such, the first prong of the test was not met.

In regard to whether the plaintiff met the second prong of the test, the Court noted that the bypass of the neutral relay did not prove that the truck was uncommonly hazardous. Moreover, this type of fatal accident was a known danger in the industry. As such, the plaintiff failed to meet the second prong of the test.

Once again, the exclusive remedy to WC benefits was upheld further strengthening the employers' immunity in all but extreme circumstances.

For more information regarding Polanco v. Rockland Coaches, please contact John Kutner at jkutner@wglaw.com or 973.854.1077.

For more information regarding Estate of Sellino v. Pinto Bros., please contact Cheryl Binosa at cbinosa@wglaw.com or 973.854.1077.