

Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: November 23, 2011

511865

In the Matter of the Claim of
GERALD D. LONGO,
Respondent,
v

ED.NOTE: Affirmed WCB's decision as to the proper carrier on Occupational Disease case, in part because carrier failed to present a complete defense.

GRAPHIC PACKAGING CORPORATION
et al.,
Appellants,
and

MEMORANDUM AND ORDER

KRAFT GENERAL FOODS et al.,
Respondents.

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: October 18, 2011

Before: Rose, J.P., Lahtinen, Kavanagh, McCarthy and Garry, JJ.

Sullivan, Keenan, Oliver & Violando, L.L.P., Albany
(Stephen R. Chesley of counsel), for appellants.

Stockton, Barker & Mead, L.L.P., Albany (Leith Carole
Ramsey of counsel), for Kraft General Foods and another,
respondents.

Walsh & Hacker, Albany (Sean F. Nicolette of counsel), for
Liberty Mutual Insurance Company, respondent.

Lahtinen, J.

Appeal from a decision of the Workers' Compensation Board, filed May 13, 2010, which ruled that Zurich American Insurance Company was liable for the payment of workers' compensation benefits.

Claimant was employed as a maintenance mechanic at a food packaging facility from 1961 to 2001. Throughout claimant's employment, the company was sold several times. At the time of his retirement in 2001, claimant's employer was Graphic Packaging Corporation, a subsidiary of Coors Brewing Company. In 2007, claimant was diagnosed with interstitial lung disease attributable to his workplace exposure to asbestos. Thereafter, claimant was awarded workers' compensation benefits for an occupational disease, and the date of disablement was established as March 15, 2007. Ultimately, a Workers' Compensation Law Judge determined that Zurich American Insurance Company, the workers' compensation carrier for Coors on the date of disablement, was liable for payment of this claim. Upon review, the Workers' Compensation Board affirmed. Zurich and Graphic Packaging now appeal.

Zurich and Graphic Packaging contend that they were denied the right to present proof disputing the claim and the record does not contain substantial evidence to establish that Coors was the employer and, therefore, that Zurich is the workers' compensation insurance carrier liable for this claim. The record reflects that Zurich was put on notice of this claim in March 2009 and was present at two subsequent hearings but did not present any proof regarding its coverage for Graphic Packaging as a subsidiary of Coors despite the Board's direction to do so. Accordingly, we find that claimant's uncontroverted testimony provides substantial evidence supporting the Board's determination that Graphic Packaging, a subsidiary of Coors, was the employer at the time of claimant's retirement and that Zurich, as the carrier for Coors on the date of disablement, is liable for this claim (see Matter of Mlodozienec v Trio Asbestos Removal Corp., 66 AD3d 1174, 1175-1176 [2009]; Matter of Nathan v Presbyterian Hosp. in City of N.Y., 66 AD2d 933, 934 [1978], lv denied 46 NY2d 712 [1979]; see also Matter of Gude v Elm Coated

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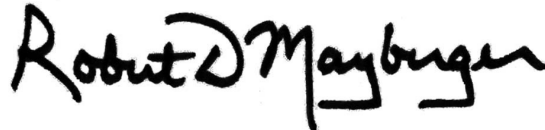
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Fabrics Div. of Grace Co., 79 AD2d 786, 787 [1980]).

Rose, J.P., Kavanagh, McCarthy and Garry, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court