

28 Mass. Workers' Comp. Rep. 71 (Mass.Dept.Ind.Acc.), 2014 WL 2156940

Department of Industrial Accidents

Commonwealth of Massachusetts

PATRICIA GREGOR

VERIZON¹ EMPLOYEE, SELF-INSURER

VERIZON, EMPLOYER

NATIONAL UNION FIRE INS. CO., INSURER²

Board Nos. 032905-06, 019925-08, 015631-13

Filed: May 19, 2014

Appearances

*1 Joseph P. Mckenna, Esq., for the Employee

Wayne **Todd Huston**, Esq., for the Self-Insurer

REVIEWING BOARD DECISION

(Judges Horan, Harpin and Calliotte)

The case was heard by Administrative Judge Vendetti.

HORAN, J. This case serves as an unfortunate example of what can go wrong when a date of injury is added to a pending claim for benefits at a § 11 hearing. (Tr. 4- 7.) See footnotes 1-2, supra. Because it is now clear the late amendment of the claim in this matter resulted in the joinder of an insurer who was not represented by counsel at the hearing, but whose rights were implicated in the ensuing decision, we vacate the decision and return the case to the senior judge for assignment to a new judge for a trial de novo. See Holden v. Town of Wilmington, 25 Mass. Workers' Comp. Rep. 165 (2011)(improper joinder causing due process violation requires decision to be vacated; case reassigned to new judge for a trial de novo). Accordingly, we do not address the remaining appellate issues.

So ordered.

Mark D. Horan

Administrative Law Judge

William C. Harpin

Administrative Law Judge

Carol Calliotte

Administrative Law Judge

Footnotes

¹ At oral argument, self-insurer's counsel confirmed that Verizon was self-insured on two of the employee's three claimed dates of injury, September 18, 2006 and July 18, 2008. On the last date of injury, September 3, 2009 ? which was added to the claim at the hearing ? the self-insurer's counsel revealed that Verizon was insured, subject to a deductible, by National Union Fire Insurance Company. (O.A. Tr. 3-8.)

² National Union Fire Insurance Company was not represented at the hearing, but it is identified in the hearing decision's caption as a party. (See O.A. Tr. 2-4.)

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