

# WCLA MCLE 8-29-19

- End of Summer Hodgepodge
- August 29, 2019
- 12:00 noon to 1 pm
- James R. Thompson Center Auditorium, Chicago, IL
- 1 hour general MCLE credit

# IL State Treasurer v. IWCC & Kormany

## 2019 Il App (1<sup>st</sup>) 180644WC

- April 2008, Gyula Kormany (Kormany) filed an application for adjustment of claim seeking benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2008)) for injuries he allegedly sustained while working for A-Tech Stucco
- In June 2009, the circuit court of Cook County found that A-Tech's workers' compensation insurance carrier had no duty to defend or indemnify A-Tech against Kormany's workers' compensation claim because A-Tech had breached the insurance contract
- subsequently amended his application for adjustment of claim to name as a party the Illinois State Treasurer (Treasurer), as ex officio custodian of the Injured Workers' Benefit Fund
- The arbitrator also concluded that the Fund was liable for payment of the award because, although A-Tech had workers' compensation insurance at the time of the accident, it "failed to provide coverage" within the meaning of section 4(d) of the Act (820 ILCS 305/4(d) (West 2008)) by breaching the insurance contract.

# IL State Treasurer v. IWCC & Kormany

## 2019 Il App (1<sup>st</sup>) 180644WC

- We observe that in October 2014, prior to the arbitration hearing, Kormany died of causes unrelated to his workers' compensation claim. There is no evidence of record that a personal representative was appointed and substituted as the petitioner following Kormany's death. Instead, the application for adjustment of claim was amended to substitute the Estate of Kormany as petitioner
- Accordingly, we hold that Kormany's death suspended the Commission's jurisdiction over his claim until such time as a personal representative of Kormany's estate was properly appointed and substituted as the petitioner. In the absence of such an appointment and substitution, the Commission's decision was premature and therefore improper. As a result, both the decision of the Commission and the judgment of the circuit court must be vacated.
- While section 25-1 of the Probate Act undoubtedly permits the distribution of an estate's assets by means of a small-estate affidavit, we find this to be separate and distinct from the requirement that a personal representative of the decedent's estate be appointed to prosecute a workers' compensation claim that is pending and unresolved at the time of the employee's death.
- Thus, while the proceeds of a judgment may be distributed pursuant to the small-estate procedure outlined in the Probate Act, no authority has any been cited to us that would permit the prosecution of an action absent the appointment of a personal representative.

# Bell v. IWCC

## 2015 IL App (4<sup>th</sup>) 140028WC

- Sec. 8(e)19: In a case of specific loss and the subsequent death of such injured employee from other causes than such injury leaving a widow, widower, or dependents surviving before payment or payment in full for such injury, then the amount due for such injury is payable to the widow or widower and, if there be no widow or widower, then to such dependents, in the proportion which such dependency bears to total dependency.
- Sec. 8(h): In case death occurs from any cause before the total compensation to which the employee would have been entitled has been paid, then in case the employee leaves any widow, widower, child, parent (or any grandchild, grandparent or other lineal heir or any collateral heir dependent at the time of the accident upon the earnings of the employee to the extent of 50% or more of total dependency) such compensation shall be paid to the beneficiaries of the deceased employee and distributed as provided in paragraph (g) of Section 7.

# Bell v. IWCC

## 2015 IL App (4<sup>th</sup>) 140028WC

- By their plain terms, these provisions merely establish *to whom benefits will be paid* if the employee dies with a spouse or dependents before he has been fully compensated for his work-related injury. They do not limit the ability of a deceased employee's estate to collect accrued, unpaid benefits that were due and owing to the employee while he was alive. Neither provision addresses what happens when an employee dies without leaving a surviving spouse or any surviving dependents, as in this case. Accordingly, neither provision should be read as barring an employee's estate to collect accrued benefits under such circumstances.
- We reach the same conclusion here. In this case, Ms. Nash's estate seeks only those PPD benefits that had accrued and were payable, due, and owing to Ms. Nash prior to her death. It does not seek future installment payments that would have accrued and become payable to Ms. Nash on some future date had she survived. Republic Steel and Nationwide Bank provide that such benefits may be collected by Ms. Nash's estate.
- Sections 8(e)19 and 8(h) say nothing about what happens when an injured employee dies without leaving any eligible dependents. Thus, these sections of the Act do not defeat the employee's estate's right to collect benefits that accrued before the claimant's death, as confirmed by Republic Steel.

# Ravenswood Disposal Service v. IWCC

## 2019 IL App (1<sup>st</sup>) 181449WC

- Maria Diaz and Raul Lagunas married on June 4, 1996.
- Their son Sergio Lagunas was born on November 9, 2001.
- Maria and Raul divorced on August 18, 2010; Raul paid child support/cash payments
- October 17, 2010, Maria married Isidro Delgado.
- Raul died on September 15, 2013, after he was crushed between a dump truck and front loader.
- After Raul died, Isidro adopted Sergio, and Maria changed the last name on his birth certificate from Lagunas to Delgado.

# Ravenswood Disposal Service v. IWCC

## 2019 IL App (1<sup>st</sup>) 181449WC

- Following the Arbitration hearing on October 26, 2015, the Arbitrator held that (1) RDS employed Raul on the date of the accident, (2) the accident arose out of and in the course of his employment, and (3) Sergio was Raul's survivor for purposes of section 7(a) of the Act.
- Additionally, the arbitrator imposed penalties of \$32,081.46 and \$10,000 pursuant to sections 19(k) and 19(l) of the Act, respectively, and attorney fees and costs totaling \$12,832.58 under section 16 of the Act.
- Dissenting commissioner noted that, although section 7(a) of the Act does not expressly terminate benefits for dependent minors upon adoption in the same manner as for surviving spouses who remarry, that provision should be construed in light of the Adoption Act
- Circuit Court entered a written order confirming the Commission's decision

# Ravenswood Disposal Service v. IWCC

## 2019 IL App (1<sup>st</sup>) 181449WC

- **First**, RDS claims that the Commission's finding that Raul was its employee, and not an independent contractor, when the accident occurred was against the manifest weight of the evidence. DENIED.
- The single most important factor is whether the purported employer has a right to control the actions of the employee. Another criterion "of great significance" is the nature of the alleged employee's work in relation to the employer's general business.
- **Second**, RDS contends that the Commission erred as a matter of law in awarding medical bills that were entered into evidence without proof that they were certified or obtained pursuant to subpoena under section 16. DENIED.
- Objection to the admission of Raul's medical bills was on single ground—namely, that "many" of the bills had been reduced and were, therefore, inaccurate—and expressly denied raising any other challenge to their admissibility. The Arbitrator admitted the bills into evidence subject to the objection "stated in the objection." The Arbitrator also questioned Maria's counsel about whether the bills had been certified or obtained pursuant to subpoena, but RDS never objected to their admission on that basis. Its claim of error based upon lack of certification is, therefore, forfeited.

# Ravenswood Disposal Service v. IWCC

## 2019 IL App (1<sup>st</sup>) 181449WC

- **Third**, RDS contends that the Commission erred in finding that Sergio qualified as Raul's dependent under section 7(a) of the Act because, as a matter of law, death benefits are not due to a decedent's child who has been adopted. DENIED.
- This issue presents a question of statutory interpretation, and our review is, therefore, de novo.
- Thus, section 7(a) of the Act contemplates that a child may qualify for benefits based on one statutory ground but not another, and the fact that a child does not qualify under a particular ground will not prevent him or her from obtaining benefits under a different ground, if one exists. Applying these principles in the present case, we find that Sergio's adoption by Isidro following Raul's death may have precluded Sergio from claiming ongoing benefits on the basis that Raul was "legally obligated" to support him but did not restrict him from claiming benefits on different grounds, namely, that he was under age 18 when Raul died. The WC Act contains no express language terminating Sergio's right to benefits by reason of his adoption where he otherwise qualified for benefits based on his age when the accident occurred.

# Ravenswood Disposal Service v. IWCC

## 2019 IL App (1<sup>st</sup>) 181449WC

- **Fourth**, RDS argues that the Commission's award of penalties under sections 19(k) and (l) of the Act (820 ILCS 305/19(k), (l) (West 2012)) and attorney fees under section 16a of the Act (id. § 16a) was against the manifest weight of the evidence or an abuse of discretion.  
DENIED.
- Different standard of review for 19(l) (manifest weight?) vs. 19(k) & 16 (abuse of discretion?)
- RDS has not challenged the merits of the Commission's imposition of attorney fees and penalties for its failure to pay benefits predicated on its theory that Raul was not an employee. The issue is, therefore, forfeited.

# Conway v. IWCC

## 2019 IL App (4<sup>th</sup>) 180258WC

- Circuit Court dismissed Petitioner's Petition for Review of a decision of the Commission for lack of jurisdiction
- Employer filed a motion to dismiss the claimant's petition for failure to file with the circuit court proof that a notice of intent was filed with the Commission or an affidavit within 20 days of receiving the Commission's decision. The employer argued that such proof was required to be filed with the court within 20 days of receiving the Commission's decision by section 19(f)(1) of the Act to vest the circuit court with jurisdiction.
- Parties do not dispute that the claimant did not file a notice of intent or an affidavit in the circuit court within 20 days of receipt of the Commission's decision. Instead, the parties argue whether this is a requirement to vest the circuit court with subject-matter jurisdiction under section 19(f)(1) of the Act
- Petitioner contends that section 19(f)(1) does not specifically state that a notice of intent or affidavit must be filed within the circuit court within 20 days, but only that the circuit court cannot file and issue a summons unless the court has been provided proof of filing.
- Respondent, relying on interpretations of section 19(f)(1) prior to its 2013 amendment, contends that a failure to file a notice of intent or an affidavit with the circuit court within the 20-day period deprives Circuit Court of jurisdiction over the judicial review.
- Previous version of section 19(f)(1) required proof of payment to the Commission for the probable cost of the record before a summons could be issued, in contrast to the current version, which requires proof of filing a notice of intent with the Commission before a summons can be issued
- Following these previous interpretations of section 19(f)(1), we conclude that the newest amendment requires the petitioner to exhibit proof of filing with the Commission of the notice of the intent to file for review in the circuit court or an affidavit of the attorney setting forth that notice of intent to file for review in the circuit court within 20 days of receipt of Commission's decision.

# PA98-0040 (2013)

- The Commission shall not be required to certify the record of their proceedings to the Circuit Court, unless the party commencing the proceedings for review in the Circuit Court as above provided, shall file with pay to the Commission notice of intent to file for review in Circuit Court. the sum of 80¢ per page of testimony taken before the Commission, and 35¢ per page of all other matters contained in such record, except as otherwise provided by Section 20 of this Act. Payment for photostatic copies of exhibit shall be extra. It shall be the duty of the Commission upon such filing of notice of intent to file for review in the Circuit Court payment, or failure to pay as permitted under Section 20 of this Act, to prepare a true and correct typewritten copy of such testimony and a true and correct copy of all other matters contained in such record and certified to by the Secretary or Assistant Secretary thereof. The changes made to this subdivision (f)(1) by this amendatory Act of the 98th General Assembly apply to any Commission decision entered after the effective date of this amendatory Act of the 98th General Assembly.
- ~~No~~ In its decision on review the Commission shall determine in each particular case the amount of the ~~probable cost of the record to be filed as a part of the summons in that case and no~~ request for a summons may be filed and no summons shall issue unless the party seeking to review the decision of the Commission shall exhibit to the clerk of the Circuit Court proof of ~~payment by filing with the Commission of the notice of the intent to file for review in the Circuit Court a receipt showing payment~~ or an affidavit of the attorney setting forth that notice of intent to file for review in the Circuit Court payment has been given in writing made of the sums so determined to the Secretary or Assistant Secretary of the Commission, except as otherwise provided by Section 20 of this Act.
- Effective immediately; signed into law 6-28-13
- IWCC Form IC25/Affidavit?