CASE NO. 5838 CRB-4-13-5 CLAIM NO. 400040090	: COMPENSATION REVIEW BOARD
AGOSTINO MELONI, DECEASED ANGELINA T. MELONI, EXECUTRIX OF THE ESTATE OF AGOSTINO MELONI CLAIMANT-APPELLEE	: WORKERS' COMPENSATION COMMISSION
v.	: JUNE 1, 2017

RAYMARK INDUSTRIES, INC.
CONNECTICUT LIGHT & POWER COMPANY/EVERSOURCE
EMPLOYERS

and

ZURICH NORTH AMERICA
CONNECTICUT INSURANCE GUARANTY ASSOCIATION (CIGA)
INSURERS
RESPONDENTS-APPELLEES

and

SECOND INJURY FUND
RESPONDENT-APPELLANT

APPEARANCES:

The claimant was represented by Catherine M. Ferrante, Esq., and Christopher Meisenkothen, Esq., Early, Lucarelli, Sweeney & Meisenkothen, L.L.C., 265 Church Street, 11th Floor, P.O. Box 1866, New Haven, CT 06508-1866.

Respondents-Appellees Raymark Industries, Inc., and Connecticut Insurance Guaranty Association were represented by Joseph J. Passaretti, Jr., Esq., Montstream & May, L.L.P., 655 Winding Brook Drive, Glastonbury, CT 06033-6087.[1]

Respondent-Appellant Second Injury Fund was represented by Lawrence G. Widem, Esq., Assistant Attorney General, Office of the Attorney General, 55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120.

[1] Connecticut Light and Power Company/Eversource and Zurich North America were not parties to this appeal and did not appear at oral argument.

This Petition for Review[2] from the April 26, 2013 Finding and Award of Amado J. Vargas, the Commissioner acting for the Eighth District, was heard January 27, 2017 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Christine E. Engel and Daniel E. Dilzer.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The Second Injury Fund ("fund") has appealed from an April 26, 2013 Finding and Award issued by Commissioner Amado J. Vargas ("2013 Finding"), who found that the claimant was entitled to benefits due to compensable injuries he received as a result of his work at Connecticut Light & Power Company (now known as Eversource) and a prior employer, Raymark Industries.[3] The trial commissioner found that Eversource was responsible for administering the claim as the § 31-299b carrier but also found that the fund could have potential exposure since Raymark had been self-insured for some period of the claimant's employment and had subsequently declared bankruptcy.[4] The fund and Eversource both filed timely appeals;

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[2] We note that several postponements and extensions of time were granted during the pendency of this appeal.

[3] The trial commissioner determined that the date of injury for the administration of this claim was August 21, 2007, the date of the claimant's lung cancer diagnosis.

[4] Section 31-299b C.G.S. (Rev. to 2007) states: "If an employee suffers an injury or disease for which compensation is found by the commissioner to be payable according to the provisions of this chapter, the employer who last employed the claimant prior to the filing of the claim, or the employer's insurer, shall be initially liable for the payment of such compensation. The commissioner shall, within a reasonable period of time after issuing an award, on the basis of the record of the hearing, determine whether prior employers, or their insurers, are liable for a portion of such compensation and the extent of their liability. If prior employers are found to be so liable, the commissioner shall order such employers or their insurers to reimburse the initially liable employer or insurer according to the proportion of their liability. Reimbursement shall be made within ten days of the commissioner's order with interest, from the date of the initial payment, at twelve per cent per annum. If no appeal from the commissioner's order is taken by any employer or insurer within twenty days, the order shall be final and may be enforced in the same manner as a judgment of the Superior Court. For purposes of this section, the Second Injury Fund shall not be deemed an employer or an insurer and shall be exempt from any liability. The amount of any compensation for which the Second Injury Fund would be liable except for the exemption provided under this section shall be reallocated among any other employers, or their insurers, who are liable for such compensation according to a ratio, the numerator of which is the percentage of the total compensation for which an employer, or its insurer, is liable and the denominator of which is the total percentage of liability

however, on July 18, 2016, Eversource and the claimant's estate entered into a stipulation approved by the trial commissioner for the Fifth District settling all claims against Eversource. The fund has filed a "Motion to Dismiss All Claims and Vacate the Judgment Against the Second Injury Fund" for all claims dated September 15, 2016 and argued this motion before this tribunal on January 27, 2017. Upon review, we conclude that any legal exposure the fund may face is speculative and contingent on further actions pursuant to § 31-355 C.G.S. which may never occur.[5] As the present controversy is not ripe, we dismiss this appeal.

The argument presented by the fund is essentially that in light of the 2005 revision of § 31-299b C.G.S. in Public Act 05-199, various elements of the 2013 Finding are legally invalid.[6] It specifically argues that Findings, ¶ 26, in the Finding and Award is

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of all employers, or their insurers, excluding the percentage that would have been attributable to the Second Injury Fund, for such compensation."

[5] Section 31-355 (Rev. to 2007) states: "(a) The commissioner shall give notice to the Treasurer of all hearing of matters that may involve payment from the Second Injury Fund, and may make an award directing the Treasurer to make payment from the fund.

(b) When an award of compensation has been made under the provisions of this chapter against an employer who failed, neglected, refused or is unable to pay any type of benefit coming due as a consequence of such award or any adjustment in compensation required by this chapter, and whose insurer failed, neglected, refused or is unable to pay the compensation, such compensation shall be paid from the Second Injury Fund. The commissioner, on a finding of failure or inability to pay compensation, shall give notice to the Treasurer of the award, directing the Treasurer to make payment from the fund. Whenever liability to pay compensation is contested by the Treasurer, the Treasurer shall file with the commissioner, on or before the twenty-eighth day after the Treasurer has received an order of payment from the commissioner, a notice in accordance with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested. A copy of the notice shall be sent to the employee. The commissioner shall hold a hearing on such contested liability at the request of the Treasurer or the employee in accordance with the provisions of this chapter. If the Treasurer fails to file the notice contesting liability within the time prescribed in this section, the Treasurer shall be conclusively presumed to have accepted the compensability of such alleged injury or death from the Second Injury Fund and shall have no right thereafter to contest the employee's right to receive compensation on any grounds or contest the extent of the employee's disability."

[6] Public Act No. 05-199, § 1, states: "Section 31-299b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2006*): If an employee suffers an injury or disease for which compensation is found by the commissioner to be payable according to the provisions of this chapter, the employer who last employed the claimant prior to the filing of the claim, or the employer's insurer, shall be initially liable for the payment of such compensation. The Commissioner shall, within a reasonable period

legally invalid, contending that the trial commissioner misapplied the Supreme Court's precedent in Franklin v. Superior Casting, 302 Conn., 219 (2011) in finding the fund could be responsible for an apportionment share of an uninsured employer's share of benefits due to a claimant. It cites our precedent in Tufts v. Cary/New England Building, 5297 CRB-7-07-11 (November 5, 2008) for its position.

We decline to address the merits of the fund's appeal. The claimant argues that the impact of the stipulation renders the fund's concerns moot. Given that the claimant has settled all his claims against Eversource, the lead carrier under § 31-299b C.G.S. is obligated to pay the claim. We note that there does not appear to be any statutory mechanism by which the claimant could now seek an additional award against the fund. As a result, there is no pending dispute which implicates the fund's interests. We find our precedent in Quinones v. RW Thompson Company, Inc., 5792 CRB-1-12-10 (January 16, 2014) establishes a clear policy that this tribunal discourages unripe appeals.

In Quinones, the claimant appealed a trial commissioner's decision to obtain additional evidence prior to deciding whether to grant a Motion to Preclude. We declined to rule on the merits of this dispute, deeming it "a decision on an interlocutory motion upon an interlocutory motion." Id. We pointed out that our precedent stood for the

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of time after issuing an award, on the basis of the record of the hearing, determine whether prior employers, or their insurers, are liable for a portion of such compensation and the extent of their liability. If prior employers are found to be so liable, the commissioner shall order such employers or their insurers to reimburse the initially liable employer or insurer according to the proportion of their liability. Reimbursement shall be made within ten days of the commissioner's order with interest, from the date of the initial payment, at twelve per cent per annum. If no appeal from the commissioner's order is taken by any employer or insurer within twenty days, the order shall be final and may be enforced in the same manner as a judgment of the Superior Court. For purposes of this section, the Second Injury Fund shall not be deemed an employer or an insurer and shall be exempt from any liability. The amount of any compensation for which the Second Injury Fund would be liable except for the exemption provided under this section shall be reallocated among any other employers, or their insurers, who are liable for such compensation according to a ratio, the numerator of which is the percentage of the total compensation for which an employer, or its insurer, is liable and the denominator of which is the total percentage of liability of all employers, or their insurers, excluding the percentage that would have been attributable to the Second Injury Fund, for such compensation."

principle that "this board discourages parties from filing appeals before the commissioner has had a chance to rule on the merits of a case." Id., *quoting* Kuba v. Michael's Landscaping & Lawn Service, 4266 CRB-4-00-7 (August 29, 2001). In the present matter, there is no order directing the fund to pay any money to the claimant and we cannot identify a statutory mechanism subsequent to the stipulation by which such an order could be obtained. The Quinones precedent argues against addressing the fund's claims at this juncture. The merits of an apportionment claim against the fund have yet to be addressed, and may never be addressed. This appeal would appear to be the very definition of an unripe controversy. Since the threat of "irreparable harm" is generally a prerequisite to consideration of an appeal in the absence of a final judgment, we find the appeal unripe for appellate review.

The fund argues that notwithstanding the fact that the claimant may now be unable to seek an award against it subsequent to the stipulation, paragraph 13 of the stipulation contains an explicit carve-out preserving the rights of the claimant's dependent widow to potentially seek an award for survivorship benefits under § 31-306 C.G.S. As the fund views the situation, the potential § 31-306 C.G.S. award could apply what they view as the erroneous legal reasoning of the 2013 Finding and the fund could then be subject to liability. The merits of a survivor's claim have not been addressed by this commission. The proper forum for the fund to present these arguments would be before a trial commissioner considering the merits of a § 31-306 C.G.S. claim at a formal hearing. If, subsequent to a hearing, the fund is subject to fiscal liability pursuant to § 31-355 C.G.S., it may then bring an appeal to this tribunal to address an actual, as opposed to a speculative, controversy.

Having found the present controversy unripe, we hereby dismiss this appeal.

Commissioners Christine L. Engel and Daniel E. Dilzer concur in this opinion.

CERTIFICATION

THIS IS TO CERTIFY THAT a copy of the foregoing was mailed this 1st day of June 2017 to the following parties:

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