CASE NO. 6347 CRB-8-19-9 CLAIM NO. 400103893	:	COMPENSATION REVIEW BOARD
MARK BEERS, DECEASED ALLISON BEERS-JACHEO, ADMINISTRATRIX CLAIMANT-APPELLEE	: :	WORKERS' COMPENSATION COMMISSION
v.	:	FEBRUARY 24, 2021

RAYMARK INDUSTRIES, INC.
EMPLOYER

and

THE HARTFORD
INSURER
RESPONDENTS-APPELLEES

and

SECOND INJURY FUND
RESPONDENT-APPELLANT

APPEARANCES:

The claimant was represented by Christopher Meisenkothen, Esq., and Catherine Ferrante, Esq., Early, Lucarelli, Sweeney & Meisenkothen, L.L.C, 265 Church Street, 11th Floor, New Haven, CT 06510.[1]

Respondent Raymark Industries, Inc., did not appear at oral argument or at proceedings below.

Respondent Hartford Insurance Group was represented by Zachary M. Delaney, Esq., Pomeranz, Drayton & Stabnick, L.L.C., 95 Glastonbury Boulevard, Suite 216, Glastonbury, CT 06033-4453.

[1] Mark Beers died on December 7, 2018, and Allison Beers-Jacheo was appointed administratrix of his estate on January 24, 2019. At the formal hearing held on June 7, 2019, the commissioner granted the claimant's Motion to Substitute Party; in the interests of clarity, we will refer to Mark Beers as the decedent and Allison Beers-Jacheo as the claimant.

Respondent Second Injury Fund was represented by Lawrence G. Widem, Esq., Assistant Attorney General, Office of the Attorney General, 165 Capitol Avenue, Suite 4000, Hartford, CT 06106-1668.

This Petition for Review from the August 29, 2019 Finding and Award by David W. Schoolcraft, the Commissioner acting for the Eighth District, was heard July 24, 2020 before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners Randy L. Cohen and William J. Watson III.[2]

OPINION

STEPHEN M. MORELLI, CHAIRMAN. Respondent Second Injury Fund (fund) has petitioned for review from the August 29, 2019 Finding and Award (finding) by David W. Schoolcraft, the Commissioner acting for the Eighth District (commissioner). We find no error and accordingly affirm the decision.

The commissioner identified the following issues for determination: (1) whether the claimant's decedent suffered an occupational disease arising out of and in the course of his employment; (2) the decedent's eligibility for medical treatment and payment of medical bills; (3) the decedent's eligibility for temporary total disability benefits; (4) the decedent's compensation rate; and (5) whether the respondent employer was uninsured or insured by the Hartford Insurance Group (The Hartford). The commissioner made the following factual findings which are pertinent to our analysis.

[2] We note that four motions for extension of time were granted, either in full or in part, during the pendency of this matter, and one motion for extension of time was ruled "moot." A motion for continuance was also granted during the pendency of this appeal.

The respondent employer, Raymark Industries, Inc., manufactured and sold automotive brake linings and clutch parts; for most of its existence, the friction materials manufactured by the company contained asbestos fiber.[3] For many decades, the company's center of production operations was located in Stratford, Connecticut, where Raymark operated a large manufacturing facility. In 1961, the decedent began working for Raybestos in Department 4, where the company produced friction parts for automatic transmissions. He operated a machine which involved grinding wafers of friction material so they would fit into the metal bands of automotive transmissions. The mixture from which the friction material was made contained asbestos fiber, primarily in the form of chrysotile. The grinding process released asbestos fiber into the atmosphere where the decedent was working.

The decedent was eventually sent to another Department 4 operation, running the punch press that cut the transmission wafers. The wafers were then sent to the ovens to be hardened before being sent on to the ring grinder. For most of the decedent's employment at Department 4, he operated an extruder, which involved shoveling asbestos powder onto a scale from 55-gallon barrels labeled as chrysotile asbestos. The powder would then be loaded into a machine in which it would be mixed with other ingredients to create a "batter-like substance" from which the sheets of friction material would be manufactured. Findings, ¶ 6. Shoveling the asbestos powder released large quantities of asbestos fiber into the air. While working in the extruding room, the decedent occasionally wore a paper mask, but the mask was not very effective in keeping

[3] During certain time frames relevant to this claim, Raymark Industries, Inc., was also known as Raybestos-Manhattan, Inc. We therefore will refer to either "Raybestos" or "Raymark" as circumstances warrant.

fiber and dust out of his mouth or lungs. At the end of the workday, the decedent's clothes and hair were covered with dust.

Although the decedent primarily worked in the automotive transmission department, he occasionally worked in other departments. In Department 32, his work involved remanufacturing brake shoes by removing the old linings and gluing on new friction material. This process also required grinding friction material fabricated from asbestos fiber. When the decedent was "loaned out" to work in Department 2, his responsibilities included cutting large sheets of asbestos-based friction material into smaller sheets. The decedent left Raybestos in 1969; throughout his time at the company, he was exclusively a production worker in the Stratford plant. At no time was he ever involved in sales, management, or clerical functions.

After leaving Raybestos, the decedent worked in the plastics industry, eventually forming his own company in which he designed and manufactured plastic carrying cases. After selling his company, he worked as a car salesman; in 2010, he was hired by a fence company subcontractor for The Home Depot where he worked as a salesman, traveling to the homes of customers to give estimates. After leaving his employment at Raybestos, the decedent was not exposed to asbestos in any of his other jobs, and he had no known exposure to asbestos at any other time or place.[4]

In June 2016, the decedent was experiencing shortness of breath, and his primary care physician referred him to his cardiologist, Arthur Seltzer, M.D. He underwent a CT

[4] It should be noted that in his ruling on the fund's motion to correct, the commissioner amended his findings to reflect the testimony of Jerrold L. Abraham, M.D., indicating that the decedent may have been exposed to asbestos-containing products while performing home improvement tasks for his mother-in-law during the years between 1970 and 1975, in 1977, and in 1982. See October 24, 2019 Ruling on Motion to Correct, p. 2. See also Claimant's Exhibit AA, p. 44; Claimant's Exhibit EE.

scan which revealed fluid around the lungs. He was then referred to Kyle Bramley, M.D., a pulmonary specialist at the Smilow Cancer Center at Yale. Erin DiBaise, M.D., a surgeon at the same facility, performed a biopsy and the decedent was diagnosed with mesothelioma on September 6, 2016.

The decedent, through counsel, filed a notice of claim seeking compensation for occupational disease due to exposure to asbestos during his period of employment at Raybestos. Claimant's counsel also sent his client's pathology slides to Jerrold L. Abraham, M.D., a board-certified pathologist at SUNY Upstate Medical University in Syracuse, New York, where Abraham was also the Director of Environmental and Occupational Pathology. Abraham reviewed the slides and issued a report on December 21, 2016, wherein he stated that the slides demonstrated "an invasive epithelioid malignancy consistent with mesothelioma …." Claimant's Exhibit DD. Abraham also indicated that he was unable to comment on the amount of asbestos fiber in the decedent's lungs or opine as to whether he was also suffering from asbestosis.

The decedent was referred to Memorial Sloan-Kettering (MSK) for treatment. On February 15, 2017, he underwent thoracotomy surgery to remove as much of the tumor as possible, which surgery was halted when it was discovered that the cancer was not amenable to resection. He then began immunotherapy treatment with Marjorie Zanderer, M.D., an oncologist with MSK, which necessitated that he travel to New York every two weeks. He also traveled to Yale for additional testing.

At the time the decedent was diagnosed with mesothelioma, he was still working on a full-time basis for the fence company affiliated with The Home Depot. Although he was seventy-two years old when diagnosed, he had no immediate plans to retire from the

workforce. However, his ability to work was negatively impacted due to his breathing problems and the demands of his treatment.

After the form 30C was filed, the claim was transferred to the Eighth District office of the Workers' Compensation Commission (commission) and placed on the asbestos litigation docket. A pre-formal hearing was held in the matter on October 23, 2017; the only respondent which was sent notice of the hearing was Raymark Industries, Inc. The notice was mailed to the company's last known address, which was 3 Times Square, 11th Floor, New York, New York 10036. A copy of the hearing notice was also sent to 75 East Main Street in Stratford, Connecticut, the former site of the manufacturing facility. No one attended the pre-formal hearing on behalf of the respondent employer.

A second pre-formal hearing was scheduled for November 2017, and notice was also sent to The Harford and the Second Injury Fund, both of which were represented at the hearing. The parties raised the issue of whether Raybestos had insurance coverage or was self-insured during the period of the decedent's employment; the fund also argued that the claim was barred because Raymark's obligations had been discharged in bankruptcy.

The issue of Raybestos' insurance status in the 1960s has been litigated in other cases before this commission; in the course of that litigation, commission employees and other parties testified and produced commission records along with those of certain insurers. At the November 2017 pre-formal hearing, counsel for The Hartford indicated that rather than repeating the depositions of several witnesses in these prior matters, he planned to submit the testimony and records generated during formal proceedings in Stec v. Raymark Industries, Inc., 5156 CRB-4-06-11 (November 21, 2007), *rev'd*, 114 Conn.

App. 81 (2009), *rev'd*, 299 Conn. 346 (2010); Dechio v. Raymark Industries, Inc., 5155 CRB-4-06-11 (November 28, 2007), *aff'd*, 114 Conn. App. 58 (2009), *aff'd*, 299 Conn. 376 (2010); and Armour v. Raymark Industries, Inc. [Claim Number 400080473], a case which settled prior to a decision being issued.

On November 30, 2017, the fund filed a "Motion to Dismiss for Lack of Subject Matter Jurisdiction," asserting that because the workers' compensation claim had been discharged pursuant to 11 U.S.C. § 524, the discharge enjoined the prosecution of the claim and any finding and award against Raymark would be void. The motion was denied without prejudice.

On December 4, 2017, the fund filed a "Motion to Preclude the Admission of Prior Testimony and Motion to Preclude the Application of the Doctrine of Collateral Estoppel Against the Second Injury Fund." The commissioner sustained the fund's objection to the decedent testifying by deposition but denied without prejudice the fund's motion to preclude admission of the testimony of prior witnesses pending the submission of additional information. The commissioner also denied the fund's objection to the application of collateral estoppel on the basis that the motion was premature and the objection could be raised at trial.

On March 16, 2018, the fund filed a second "Motion to Dismiss for Lack of Subject Matter Jurisdiction," contending that "if Raymark is a dissolved corporation," this commission lacked jurisdiction over the claim because the corporation was dissolved more than three years ago. Administrative Notice Exhibit 7, p. 1. The fund also asserted, alternatively, that:

> if the formalities of the dissolving of the corporation have not taken place then, as of the date of the claim, Raymark was a de

> facto corporation that had wound up its affairs and fully [distributed] all of its assets. Under the common law, the trial commissioner lacks the subject matter jurisdiction to hear, determine and enter a judgment, under the workers' compensation act, against a dissolved de facto corporation. The trial commissioner cannot enter a judgment against a corporation that no longer exists.

Id., 2.

The claim was assigned for a formal hearing on March 21, 2018, with notice to Raymark being sent to its Stratford and New York addresses. The decedent, The Hartford, and the fund were represented, but no one appeared for Raymark. The notices which had been sent to the Stratford address were returned as undeliverable. The notices sent to the New York address were also returned as undeliverable with various U.S.P.S. notations regarding the insufficiency of the address and post office's inability to forward the notices.

At the formal hearing, The Hartford submitted several transcripts of depositions from witnesses in prior cases in which Raybestos' insurance coverage had been litigated. The fund was represented at all of these depositions. Thousands of pages of documents which had been marked as exhibits in those depositions were also admitted as full exhibits. The decedent appeared and testified regarding his employment at Raybestos and his exposure to airborne asbestos dust while working there. He also testified regarding his subsequent employment, indicating that he was unaware of any additional exposure to asbestos after leaving Raybestos.

The decedent was queried regarding the effect of his lung disease on his ability to function and he indicated that although he was able to bathe and dress himself, he had difficulty sleeping and standing for long periods of time. He also discussed the demands

placed upon him by his ongoing treatment in New York and indicated that he occasionally required the use of supplemental oxygen. He testified that following his diagnosis, he had made fewer sales for the fence company and consequently experienced a drop in his earnings.

Abraham was deposed on July 16, 2018, and testified that the pathology slides which had been sent to him confirmed that the decedent had cancer but that "immunohistochemical stains" were necessary to classify the cancer as mesothelioma or adenocarcinoma. Claimant's Exhibit AA, p. 14. Although he had not been sent the actual stains, he indicated that the pathology reports relative to the stains confirming a diagnosis of mesothelioma had been included in the medical reports sent to him. Abraham testified that on the basis of the pathology slides and immunohistochemical stains, he was able to confirm the diagnosis of mesothelioma. Abraham also testified regarding his understanding of the nature of the decedent's employment at Raybestos and the dusty conditions of that employment. His testimony in this regard was consistent with that of the decedent; Abraham opined that the decedent "clearly" had significant exposure to asbestos while employed at Raybestos. Id., 17.

A second session of the formal hearing was held on July 25, 2018, at which time additional claimant's exhibits were admitted and counsel for the decedent indicated he would like to take a second deposition of Abraham before resting his case. At this second deposition, Abraham essentially discussed the same points he had made in the first deposition, although "some of the questions and opinions were stated with more precision." Findings, ¶ 37. He described the decedent's exposure to asbestos at Raybestos as "substantial," which he defined as "moderate to heavy," and opined that

Beers' "asbestos exposure was a substantial, if not total, cause of his mesothelioma." Claimant's Exhibit LL, pp. 70, 72.

A third session of the formal hearing was held on November 15, 2018, at which time the transcript of Abraham's second deposition was put into evidence along with three studies which had been discussed at the deposition and some additional exhibits relative to the decedent's out-of-pocket medical expenses.[5] The respondents produced no other witnesses or expert testimony and the taking of evidence closed at that time. On December 7, 2018, the claimant died, and on January 24, 2019, Allison Beers-Jacheo was appointed administratrix of his estate.

The record of the formal hearing initially closed on February 20, 2019 with the submission of briefs and proposed findings. In its filings, the fund argued that benefits could not be awarded because the decedent had died, a fact which was not in evidence. In addition, the commissioner determined that "a large number of documents that were represented to be included among the exhibits admitted were not, in fact, present in my file." Findings, ¶ 40. The commissioner, having ascertained that the "missing documents were necessary to [his] determination of the issues presented," id., advised the parties that he intended to hold another formal hearing in order to remedy the defects in the record. Claimant's counsel subsequently filed a motion to substitute Beers-Jacheo as the claimant's representative, to which the fund objected.

The final formal hearing was held on June 7, 2019, at which time a complete set of The Hartford's exhibits was submitted into the record along with the decedent's death

[5] The studies were entitled "Malignant Mesothelioma Among Employees of a Connecticut Factory that Manufactured Friction Materials Using Chrysotile Asbestos," "Mesothelioma Not Associated with Asbestos Exposure," and "Do We Know What Causes Malignant Mesothelioma?" and were labeled as Claimant's Exhibits MM, NN, and OO, respectively.

certificate and probate certificate. Following oral argument, the commissioner granted the claimant's motion to substitute Beers-Jacheo as the claimant's representative. The parties declined to submit additional filings and the record was closed.

With regard to the issue of Raymark's insurance coverage, the commissioner found that commission records establish that in 1948, Raybestos applied for permission to self-insure its Stratford plant, which permission was granted by Commissioner Romuald J. Zielinski effective September 1, 1948. See Respondents' Exhibit 2 [F. Wynn], Sub-Exhibits 1-F, 1-A. The commissioner also found that it was "clear that when it was first granted permission to self-insure its workers' compensation liability in this state, Raybestos self-insured its entire Connecticut workforce." Findings, ¶ 44.

However, less than a year after Raybestos became an authorized self-insurer in 1948, the company decided to have some of the employees who were working out of the Stratford plant covered by insurance. On January 14, 1949, the company's then-treasurer wrote to Commissioner Zielinski seeking permission to obtain insurance from the Globe Indemnity Company for a subset of Raymark's workers, namely, the test drivers and salesmen. See id., Sub-Exhibit 1-C. Commissioner Zielinski granted permission.

The commissioner noted that "[t]his combination of insurance and self-insurance soon led to confusion among the commissioners." Findings, ¶ 48. On April 4, 1950, Commissioner Zielinski wrote to the then-chairman of the commission, the Honorable Leo J. Noonan, informing him that the manufacturing operations at Raybestos were selfinsured and that "all other operations, such as salesmen, etc. … are insured with the Globe Indemnity Company." Respondents' Exhibit 2 [F. Wynn], Sub-Exhibit 1-C.

Over the years, Raybestos was repeatedly issued certificates authorizing its Stratford facility to maintain its self-insurance. Prior to the creation of a central office for the commission chairman, the self-insurance certificates were housed in the offices of the district commissioners issuing the certificates. Although an attempt was made to centralize these records in the chairman's office, over the years many of the certificates went missing, including most of the certificates for Raybestos in the early sixties. However, the record does contain a certificate documenting that on July 13, 1964, Commissioner Zielinski renewed the company's right to self-insure through September 1, 1965. See id., Sub-Exhibit 1-A. From 1967 onward, the records are generally complete and reflect annual renewals of Raybestos' self-insurance program.

Commission records also demonstrate that during the time period between 1949 and 1983 when Raybestos was self-insured, the company purchased workers' compensation insurance annually from various insurance companies, which companies notified the commissioner about the policies pursuant to the provisions of General Statutes § 31-348.[6] From December 31, 1958, through December 31, 1969, Raybestos obtained workers' compensation insurance from The Hartford. Notice of the existence of these policies was filed with the commission in accordance with the statute. During the time period when the decedent was employed by Raybestos, the company was both an authorized self-insurer and also had workers' compensation coverage with The Hartford.

[6] General Statutes § 31-348 states: "Every insurance company writing compensation insurance or its duly appointed agent shall report in writing or by other means to the chairman of the Workers' Compensation Commission, in accordance with rules prescribed by the chairman, the name of the person or corporation insured, including the state, the day on which the policy becomes effective and the date of its expiration, which report shall be made within fifteen days from the date of the policy. The cancellation of any policy so written and reported shall not become effective until fifteen days after notice of such cancellation has been filed with the chairman. Any insurance company violating any provision of this section shall be fined not less than one hundred nor more than one thousand dollars for each offense."

The decedent was a production worker at the Stratford plant, and it is the position of The Hartford that Raybestos was self-insured for its production workforce at the Stratford facility. The Hartford asserts that its policy for the Stratford facility only covered salespersons and certain other non-production workers. However, the insurance cards filed with the commission relative to The Hartford's coverage of Raybestos in Connecticut did not specify that coverage was limited to only part of the company's workforce. The Hartford has been unable to produce any copies of the policies it issued to Raybestos. It has also not produced any underwriting documents demonstrating that its coverage was limited to only a portion of the Raybestos workforce.

On December 31, 1969, Raybestos switched its workers' compensation insurance coverage to Zurich Insurance, which issued policies to Raybestos until December 31, 1983. The Hartford placed certain Zurich underwriting documents into evidence. The earliest of these documents is for the policy period of December 31, 1976, through December 31, 1979, and reflects that the plant where the decedent worked was expressly excluded from coverage. The documents further indicate that the only exceptions to the exclusion were Stratford-based employees who were "salesmen and sales engineers…." Respondents' Exhibit 2 [P. Edgar], Sub-Exhibit 1. The exclusion of the production workers at the Stratford plant was in effect through at least December 31, 1980.

In addition to the self-insurance records, the parties produced extensive commission records held at the Fourth District office in Bridgeport, Connecticut, relative to Raybestos employees who had filed workers' compensation claims over the years. Although the records for several years could not be located, the parties submitted into evidence more than two dozen file folders containing records of claims against Raybestos

from 1951 to 1983. Each of the files included copies of various awards, voluntary agreements, stipulations, forms 36, and other documents.

These records reflect that from the late 1950s through the late 1960s, numerous claims for injuries sustained at the Stratford facility were filed against Raybestos. The claims were adjusted by a brokerage firm in Bridgeport that did not have a known connection to a workers' compensation insurer. In addition, during the same time period, none of the filings contain a reference to The Hartford or any other workers' compensation insurer. Rather, the documents were signed by the plant general manager or by the Director of Industrial Relations. From 1955 through 1967, all voluntary agreements and stipulated settlements were signed by a Raybestos official and represented that Raybestos was self-insured. The types of injuries giving rise to claims in the filings from 1951 through 1967 included "hernias, shoulder strains, fractured vertebrae, crush injuries to the hands, traumatic amputations of fingers, facial lacerations, chemical burns, dermatitis, and abrasions from grinding wheels." Findings, ¶ 63.

On July 15, 1982, Raybestos notified the commission that it had changed its name to "Raymark Corporation."[7] See Respondents' Exhibit 2 [F. Wynn], Sub-Exhibit 1-D. Raybestos' authorization as a self-insurer continued until January 1, 1983. On July 14, 1983, Raymark's treasurer wrote to Commission Chairman John Arcudi informing him that since December 31, 1982, Raymark had been insured for its entire workforce. See Respondents' Exhibit 2, [F. Wynn], Sub-Exhibit 1-D. The treasurer further indicated that he had informed the State Treasurer that Raymark would not pay any additional

[7] We note that in his finding, the commissioner cited this date as July 15, 1992. See Findings, ¶ 57. We deem this harmless scrivener's error. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 729 (2002), *cert. denied*, 262 Conn. 933 (2003).

self-insured assessments. See id. In 1983, Raymark's full workers' compensation insurance liability was placed with Ideal Mutual Insurance. See id.

On March 18, 1998, Raymark Industries, Inc., filed a voluntary petition for Chapter 11 bankruptcy with the U.S. Bankruptcy Court in the District of Utah. By the time the decedent was diagnosed with mesothelioma and filed his claim in November 2016, the bankruptcy proceedings were complete and the assets of the bankrupt estate had been distributed.

Based on the foregoing, the commissioner, having determined that the decedent was employed as a production worker at the Raybestos plant in Stratford, Connecticut, from 1961 to 1969, concluded that he suffered from pleural mesothelioma, "a disease for which the only known cause is exposure to airborne asbestos fibers." Conclusion, ¶ B. The commissioner, noting the decedent's "very detailed, clear, persuasive, and uncontroverted testimony …," Conclusion, ¶ D, relative to his work with raw asbestos and friction materials fabricated from asbestos while employed by Raybestos, concluded that his "mesothelioma was caused largely, if not entirely, by his exposure to airborne asbestos fibers during his employment at Raybestos during the period of 1961-1969."[8] Conclusion, ¶ E.

The commissioner also concluded that although the decedent had attempted to continue to work after being diagnosed and commencing medical treatment, he was totally incapacitated "as a direct consequence of his occupational lung disease and the resulting treatment," Conclusion, ¶ I, as of February 15, 2017, the date when he

[8] Consistent with this conclusion, the commissioner concluded that the claimant was entitled to reimbursement for the decedent's out-of-pocket expenses associated with his medical treatment but deferred determination of the amount of travel expenses owed to the claimant pending additional information.

underwent thoracic surgery. The commissioner determined that based on the claimant's "age, experience, difficulty breathing, his appearance at the formal hearing, and the demands of his intense treatment following the surgery … [he] remained totally incapacitated from performing any gainful employment he might otherwise have reasonably pursued." Conclusion, ¶ J. The commissioner concluded that the claimant was "totally incapacitated from February 15, 2017 until his death on December 7, 2018 – a period of 94.57 weeks." Id.

Relative to the issue of the employer's insurance status, the commissioner concluded that Raybestos was self-insured for its production workers at the Stratford facility during the decedent's period of occupational exposure to asbestos from 1961 to 1969. Given that Raybestos "has ceased to exist," Conclusion, ¶ M, and was therefore unable to pay the benefits owed to the claimant, liability for the payment of those benefits fell to the fund pursuant to the provisions of General Statutes § 31-355 (b).[9] The commissioner ordered the fund to pay to the claimant the sum of $46,672.19 representing temporary total incapacity benefits for the period of February 15, 2017, through December 7, 2018. The commissioner also held the fund liable for the medical expenses associated with the treatment of the decedent's occupational disease from September 6, 2016, until his death. Finally, the commissioner ordered the fund to reimburse the claimant the sum of $2,936.15 representing the out-of-pocket medical expense incurred by the decedent through August 19, 2018.

[9] General Statutes § 31-355 (b) states in relevant part: "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."

The fund filed numerous post-judgment motions, including a motion to correct which was denied in part and granted in part. In a wide-ranging appeal, the fund contends that the commissioner erred in: (1) failing to conclude that the claim for death benefits was pre-empted by federal bankruptcy law or to hold a separate formal hearing on the issue of the commission's subject matter jurisdiction relative to federal bankruptcy law; (2) failing to conclude that the bankruptcy discharge injunction referenced in the provisions of 11 U.S.C. § 524 (e) indemnified the fund;[10] (3) failing to adhere to the "Cordero procedure" and entering judgment directly against the fund rather than the employer;[11] (4) awarding posthumous temporary total disability benefits to the claimant's representative; (5) failing to recognize that The Hartford was bound by the commission's insurance coverage records and, in contravention to the provisions of General Statutes § 31-343, allowing into evidence discovery materials compiled in the course of prior Raymark litigation;[12] and (6) drawing improper inferences from these discovery materials and the prior commissioner's findings. We find none of the fund's claims of error persuasive.

The standard of review we are obliged to apply to a trial commissioner's findings and legal conclusions is well-settled. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1

[10] 11 U.S.C. § 524 (e) states: "Except as provided in subsection (a) (3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt."

[11] See Cordero v. State Auto Sales, Inc., 5699 CRB-6-11-11 (November 5, 2012).

[12] General Statutes § 31-343 states: "As between any such injured employee or his dependent and the insurer, every such contract of insurance shall be conclusively presumed to cover the entire liability of the insured, and no question as to breach of warranty, coverage or misrepresentation by the insured shall be raised by the insurer in any proceeding before the compensation commissioner or on appeal therefrom."

(December 15, 2004), citing Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). Thus, "it is … immaterial that the facts permit the drawing of diverse inferences. The [commissioner] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." Fair v. People's Savings Bank, 207 Conn. 535, 540 (1988), *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

We begin with the fund's claim of error relative to the pre-emption of the instant claim by federal bankruptcy law. The fund asserts that the commissioner "concluded that it was possible that the Bankruptcy Court may have created an exclusive trust for the payment of all Raymark's future asbestos disease workers' compensation claims …" Appellant's Brief, p. 2, and argues that "[u]nder the federal pre-emption doctrine, all such trusts pre-empt all state workers' compensation commissioners from entering any subsequent benefit awards against Raymark and its insurers." Id., 2-3. The fund therefore maintains that "[t]he possibility that the Bankruptcy Court exercised its pre-emption power and forever deprived the Connecticut Workers' Compensation Commission of all future Raymark asbestos claims requires a remand …." Id., 3. We disagree.

First, we note that the issue of the possible existence of a Raymark trust was actually raised by the fund in its motion to correct, wherein it sought a finding to the

effect that "the United States Bankruptcy Court created a trust for the benefit of all future Raymark employees who had [suffered] any sort of a compensable injury due to their occupational exposure to asbestos." Second Injury Fund's Motion to Correct, p. 6. The commissioner, noting that the fund had provided no evidence for the existence of such a trust, denied the correction.

The claimant has pointed out that after many years of bankruptcy litigation, "a reorganized Raytech Corporation emerged, along with the Raytech Corporation Asbestos Personal Injury Settlement Trust, a trust formed under § 524 (g) of the U.S. Bankruptcy Code to reserve and manage assets for the payment of future personal injury claims." Claimant-Appellee's Brief, p.13. However, the claimant also explained that the trust was intended to "assume the liabilities of a debtor which at the time of entry of the order for relief has been named as a defendant in '*personal injury, wrongful death, or property-damage* <u>*actions*</u> seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products.'" (Emphasis in the original.) Id., p. 18, *quoting* 11 U.S.C. § 524 (g) (2) (B) (i).

We would note that the claim giving rise to the instant appeal is not an action for personal injury, wrongful death, or property damage. Moreover, the fund has not advanced a plausible legal theory by which a workers' compensation claimant could apply for or expect to receive benefits from a personal injury settlement trust; nor has the fund explained how a claimant could overcome the exclusive remedy provisions of the Workers' Compensation Act in order to do so.[13] Given that the commissioner reached a similar conclusion, we are not persuaded that a remand on this issue is warranted.

[13] General Statutes § 31-293a states in pertinent part: "If an employee or, in case of his death, his dependent has a right to benefits or compensation under this chapter on account of injury or death from

The fund also asserts that the commissioner erred in finding the fund liable because he:

> rejected a federal Judge's interpretation of Section 524 (e) of the Bankruptcy Code … [holding] that the bankruptcy discharge injunction covered the debtor but did not cover the debtor's workers' compensation insurance carrier. The employer's bankruptcy discharge did not immunize the bankrupt employer's insurance carriers."[14]

Appellant's Brief, pp. 3-4.

However, in his memorandum, the commissioner explained that the bankruptcy discharge injunction cited by the fund was not limited to insurers but, rather, "[stated] that a discharge does not affect the liability of 'any other entity.'" August 29, 2019 Memorandum, p. 11, *quoting* 11 U.S.C. § 524 (e). The claimant also points out that although there does not appear to be any Connecticut law on this issue, it was addressed in a California workers' compensation case in which an injured employee sought a post-discharge award against his bankrupt employer so that the state's Uninsured Employers Fund could pay the claim. The U.S. Bankruptcy Appellate Panel of the Ninth Circuit held that the language of § 524 (e) "prevents us from construing § 524 (a) (2) in a manner that would shield another entity that would be liable to pay if the debtor does not." In re Munoz, 287 B.R. 546, 555 (B.A.P. 9th Cir. 2002). We therefore find no error in the commissioner's interpretation of the provisions of § 524 (e), and agree with the observation that "the employer's obligations to an injured worker do not begin with the filing of a Form 30C but with the occurrence of the work injury, and those unpaid

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injury caused by the negligence or wrong of a fellow employee, such right *shall be the exclusive remedy* of such injured employee or dependent and no action may be brought against such fellow employee unless such wrong was wilful or malicious or the action is based on the fellow employee's negligence in the operation of a motor vehicle as defined in section 14-1." (Emphasis added.)

[14] See In re Slali, 282 B.R. 225, 229 (C.D. Cal. 2002).

obligations do not dissolve when the corporation dissolves."[15] August 29, 2019 Memorandum, p. 12.

The fund also asserts that the commissioner should have entered judgment directly against Raymark so that notice of the action could have been forwarded to the Raymark trust. In support of this contention, the fund cites Cordero v. State Auto Sales, Inc., 5699 CRB-6-11-11 (November 5, 2012), wherein this board reversed the decision of the commissioner to issue orders for payment directly against the fund because the employer was engaged in bankruptcy proceedings. However, we note at the outset that at the formal hearing held in the present matter on June 7, 2019, the parties stipulated that the Raymark bankruptcy proceedings were complete, no automatic stay was in place, and Raymark was "no longer an existing entity …."[16] June 7, 2019 Transcript, p. 41. As such, it is clear that Cordero can be distinguished from the present matter in that the bankruptcy litigation in Cordero was still ongoing when the commissioner's orders were issued, whereas the bankruptcy litigation in the instant claim terminated years ago. We are therefore not persuaded that this board's analysis in Cordero is relevant to the analysis of this appeal.

Moreover, as discussed previously herein, Raymark no longer exists, and there is no corporate center or facility in Connecticut to which service could be made or a judgment could be forwarded.[17] In addition, the record indicates that hearing notices sent to the company's last known address in New York were returned to the commission as

[15] The commissioner's observations in this regard are entirely consistent with the provisions of General Statutes § 31-290, which state: "No contract, expressed or implied, no rule, regulation or other device shall in any manner relieve any employer, in whole or in part, of any obligation created by this chapter, except as herein set forth."
[16] As previously noted herein, Raymark's bankruptcy petition was filed on March 18, 1998.
[17] The record indicates that the site of Raymark's last known Connecticut address is now a shopping center.

undeliverable. We therefore find the claimant's arguments in this regard more persuasive:

> With Raymark ceasing to exist and operate, its assets having been reorganized, in part, into the Raytech asbestos personal injury trust, and its plant shuttered, there is no bankrupt estate left against which to claim payment. The resulting situation properly operates outside the purview of the bankruptcy court and is left to the state workers' compensation system.

Claimant-Appellee's Brief, p. 21.

We also note that in his ruling on the fund's motion to correct, the commissioner stated the following:

> As the Fund itself established at the formal hearing, the claimant's former employer *does not exist*. The plant in Stratford was long ago razed. Accordingly, it seems the Fund's position is as follows: I ought to have issued [an] order to pay against a non-existent entity, and mailed it to an address we know to be invalid, then waited 20 days for the non-existent employer to fail to pay the award and then, and only, then, would I be free to schedule a new formal hearing for the purpose of ordering the Fund to make the payment. If the Fund has authority requiring such a farcical ceremony, it has not articulated it. (Emphasis in the original.)

October 24, 2019 Ruling on Motion to Correct, p. 4.

Given that the fund has likewise failed to furnish this board with any persuasive authority for why the commissioner should have been expected to engage in a procedural pantomime, we affirm the commissioner's decision to directly order the fund to pay the award to the claimant in this matter.

We now turn to the fund's claim of error relative to the commissioner's decision to allow into the record the discovery materials produced in prior litigation involving Stec, supra, Dechio, supra, and Armour, supra. The fund asserts that the commissioner in the present matter erroneously inferred from the commissioner's finding in Stec "that the

claimant in this case fell outside the scope of each of the missing Hartford Insurance policies for the 1961-1969 coverage period." Appellant's Brief, p. 7. The fund also points out that commission records listed in the November 20, 2001 Investigation Report of Special Investigator James Pepe indicate that Raymark insured its workforce with The Hartford between 1961 and 1969, and those records failed to "disclose any restrictions or limitations on the scope of the insurance coverage." Id., 6; see also Respondents' Exhibit 3. The fund argues that "[i]f there were any limits on the scope of that coverage, it was up to The Hartford to identify those limits on the scope of [its] coverage." Id., 7. The fund further asserts that the commissioner in the present matter erred in failing to recognize that in accordance with the presumption codified in the provisions of § 31-343, he should have restricted the scope of his review to the evidence contained in the investigative report.

We recognize that this board has previously observed that the provisions of "General Statutes §§ 31-343 and 31-348 … are in accordance with the policy objective of allowing third parties who examine the insurance coverage documentation on file at NCCI [National Council on Compensation Insurance] to rely on the validity of these records and to prevent insurance carriers from denying what is essentially prima facie evidence of coverage."[18] Lampo v. Angelo's Pizza East Rock, L.L.C., 6134 CRB-3-16-10 (January 31, 2018), *appeal withdrawn*, (February 21, 2018). We are also aware that the provisions of § 31-343 specifically state that a "contract of insurance shall be

[18] It should be noted that during all relevant time periods for the matter at bar, insurance notices were still being filed directly with the commission and not with the National Council on Compensation Insurance [NCCI].

conclusively presumed to cover the entire liability of the insured…." It is clear, however, that the commissioner was also aware of this presumption, in that he observed that:

> as a rule, introduction of parole evidence on the existence or scope of insurance coverage has been limited to cases where employers were trying to prove the existence of coverage that an insurer had either not reported to the commission, or had reported the policy but then reported it to be cancelled prior to a work accident.

August 29, 2019 Memorandum, p. 5.

However, the commissioner points out that in the present matter, The Hartford is not attempting to dispute that a valid insurance policy was in place for the duration of the decedent's employment; rather The Hartford is maintaining that at that time, the employer was also self-insured for a portion of its workforce which happened to include the decedent.[19] The commissioner found that the commission records demonstrate "that at various times prior to January 1, 1983, [Raymark] was authorized to be a self-insurer. Given that these public records show *both* insurance and self-insurance, a conflict exists. To deny The Hartford the opportunity to present evidence that might resolve that conflict would be a deprivation of due process." (Emphasis in the original.) Id.

The commissioner therefore allowed the discovery materials which had been submitted in Stec, supra, Dechio, supra, and Armour, supra, to come into the record. Our review indicates that these discovery materials, while admittedly incomplete, contain, inter alia, self-insurance certificates commencing in 1948 and continuing on a regular

[19] As such, we agree with commissioner and find the fund's reliance on Lampo v. Angelo's Pizza East Rock, L.L.C., 6134 CRB-3-16-10 (January 31, 2018), *appeal withdrawn*, (February 21, 2018) misplaced. As the commissioner observed, "[i]n Lampo, the insurer was attempting to show that the policy it had issued (and duly reported) was void *ab initio*. It alleged issuance of the policy had been induced by fraud and, therefore, the policy was never actually in effect. In this case, The Hartford does not deny the existence of a valid insurance policy; it claims that Mr. Beers was covered by other compensation insurance, specifically, self-insurance." August 29, 2018 Memorandum, p. 5.

basis from 1965 until the 1980s.[20] These materials also contain correspondence dated January 14, 1949, from W.H. Dunn, then-treasurer of Raybestos-Manhattan, to Commissioner Zielinski indicating that although Raybestos wanted to insure its test drivers and salesmen with Globe Indemnity Company, it was also planning to continue to self-insure its workers' compensation liability except for said test drivers and salesmen. In addition, the discovery materials contain correspondence to the Honorable Leo J. Noonan, then-chairman of the commission, from Commissioner Zielinski stating that "the Raybestos division of Raybestos-Manhattan, Inc., is self-insured in Stratford for manufacturing operations only. As to all other operations, such as salesmen, etc., they are insured with Globe Indemnity Company." Respondents' Exhibit 2 [F. Wynn], Sub-Exhibit 1-C.

Finally, the discovery materials include folders containing copies of various documents pertaining to Raybestos/Raymark workers' compensation claims for the years 1951 through 1983 along with two deposition transcripts dated October 7, 2003, and May 17, 2014, respectively, of the commission records keeper who compiled the claim documents, Jean Bonzani.[21] Bonzani testified that she "checked each and every document, and in all of these folders I never found one document that indicated anything other than self-insurance." Respondents' Exhibit 2 [J. Bonzani], p. 21. Bonzani also testified that it was her "understanding that prior to the early '80s, insurers did not appear on behalf of Raybestos," Respondents' Exhibit 1, p. 37, and Raybestos was treated as a

[20] At her deposition, Wynn testified that to the best of her knowledge, up until 1983, self-insurance applications were approved by the commissioners and retained in their respective district offices. Self-insurance records were not held in a centralized location until the creation of the Office of the Chairman in 1983. See Respondents' Exhibit 2 [F. Wynn], p. 7.

[21] Unfortunately, it appears that the files for 1965, 1968 and 1969 are missing.

self-insurer prior to that point in time. The commissioner noted the following relative to these materials:

> All of these records document injuries sustained by production workers at the Stratford plant – and, universally, the employer committed in writing to paying the compensation for such workers as a self-insured employer. There can be no question but that during the claimant's period of employment, Raybestos was self-insured for injuries sustained by its production workers at Stratford, and that Mr. Beers was one of this class of workers.

August 29, 2019 Memorandum, p. 10.

It is unfortunate that The Hartford was unable to produce any of its policies for the years in question. The Hartford did submit into evidence underwriting records held by a subsequent Raymark insurer, Zurich, which assumed the risk in 1969, along with the June 23, 2014 deposition transcript of Paul Edgar, a workers' compensation team manager for Zurich. The oldest of these records is for the policy period running from December 31, 1976, through December 31, 1979, and it indicates that the Stratford facility was expressly excluded from Zurich coverage except for the salesmen and engineers. See Respondents' Exhibit 2 [P. Edgar], Sub-Exhibit 1.

With this claim of error, the fund is essentially contending that the commissioner abused his discretion by allowing into evidence discovery records from prior litigation. We do not agree; rather, we find far more persuasive The Hartford's observation that it "seems inconsistent for the Fund to argue that it is well-settled that a workers' compensation commission has authority to determine whether a contract of insurance coverage is in effect at the time of the injury and … at the same time claim that the commissioner cannot examine the record and actions of his own commission in

approving self-insurance or partial self-insurance status under § 31-284 (b)."[22] The Hartford-Appellee's Brief, p. 14.

The fund has also claimed that the commissioner drew improper inferences from these discovery documents. As the commissioner noted both at trial and in his ruling on the fund's motion to correct, he was without the benefit of a higher court decision relative to the underlying merits of either Stec, supra, or Dechio, supra, because our Supreme Court ultimately held this board lacked subject matter jurisdiction over the fund's untimely appeal in both those matters. Moreover, Armour was settled after a formal hearing but prior to a decision being issued. As the fund points out, "[t]he Compensation Review Board can read the record just as well as the trial commissioner did." Appellant's Brief, p. 14. The fund is correct, and our review of these discovery materials suggests that the commissioner drew no improper inferences relative to the issues examined in the prior litigation but, rather, limited the scope of his review to assessing the relevance of the discovery materials to the matter at bar. Contrary to the assertions of

[22] General Statutes § 31-284 (b) states in relevant part: "Each employer who does not furnish to the chairman of the Workers' Compensation Commission satisfactory proof of his solvency and financial ability to pay directly to injured employees or other beneficiaries compensation provided by this chapter shall insure his full liability under this chapter, other than his liability for assessments pursuant to sections 31-345 and 31-354 in one of the following ways: (1) By filing with the Insurance Commissioner in form acceptable to him security guaranteeing the performance of the obligations of this chapter by the employer; or (2) by insuring his full liability under this part, exclusive of any liability resulting from the terms of section 31-284b, in any stock or mutual companies or associations that are or may be authorized to take such risks in this state; or (3) by any combination of the methods provided in subdivisions (1) and (2) of this subsection as he may choose, subject to the approval of the Insurance Commissioner. If the employer fails to comply with the requirements of this subsection, an employee may bring an action against such employer for damages on account of personal injury sustained by such employee arising out of and in the course of his employment or on account of death resulting from personal injury so sustained, except that there shall be no liability under this section to an individual on the part of the employer if such individual held himself out to the employer as an independent contractor and the employer, in good faith, relied on that representation as well as other indicia of such status and classified such individual as an independent contractor."

the fund, we find this decision not only fostered the interests of judicial economy but was fully consistent with the provisions of General Statutes § 31-298.[23] There is no error.

Finally, the fund contends that the commissioner erroneously awarded temporary total disability benefits to the decedent's estate because "the right to temporary total disability benefits abates upon the death of the claimant." Appellant's Brief, p. 24. The fund further asserts that "[t]he right to pursue unpaid total disability benefits survives death by operation [of] Conn. Gen. Stat. Section 52-599 but the right to award unpaid total disability benefits (i.e.) the remedy abates upon death because there is no survival provision in Section 31-307."[24] Id., 25. The fund relies upon this board's decision in Rock v. State/University of Connecticut, 5891 CRB-2-13-10 (October 16, 2014), *transferred to Supreme Court*, A.C. 37326 (March 31, 2015), *aff'd in part, rev'd in part*, 323 Conn. 26 (2016), for this proposition. In addition, the fund argues that the commissioner "sought [to] limit Rock to its facts and then to show that Rock was wrongly decided. The trial commissioner lacked the statutory authority to award posthumous temporary total disability benefits to Mr. Beer's survivors." Appellant's Brief, p. 5.

[23] General Statutes § 31-298 states in relevant part: "In all cases and hearings under the provisions of this chapter, the commissioner shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but shall make inquiry, through oral testimony, deposition testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of this chapter."

[24] General Statutes 52-299 (a) states: "A cause or right of action shall not be lost or destroyed by the death of any person, but shall survive in favor of or against the executor or administrator of the deceased person."

General Statutes 31-307 states in relevant part: "If any injury for which compensation is provided under the provisions of this chapter results in total incapacity to work, the injured employee shall be paid a weekly compensation … and the compensation shall not continue longer than the period of total incapacity."

Leaving aside the fund's advancement of a questionable legal theory signifying that the same statutory provisions which preserve the right to pursue a remedy also operate to extinguish the right to actually receive it, we find no merit in the fund's contentions in support of this claim of error. Rather, we find its arguments in this regard are not only inconsistent with our case law but run directly counter to the axiom that workers' compensation "legislation is remedial in nature ... and … should be broadly construed to accomplish its humanitarian purpose." (Citation omitted; internal quotation marks omitted.) Russell v. Mystic Seaport Museum, Inc., 252 Conn. 596, 604-05 (2000), *quoting* Dubois v. General Dynamics Corp., 222 Conn. 62, 67 (1992).

In Rock, this board upheld the commissioner's decision concluding that a claimant's estate did not have standing to pursue total disability benefits "*when a claim for such benefits had not been made prior to the decedent's demise*." (Emphasis added.) Id. In examining this issue, we referenced our Appellate Court's decision in Haburey v. Winchester, 5763 CRB-6-12-6 (June 14, 2013), *aff'd*, 150 Conn. App. 699 (2014), *cert. denied*, 312 Conn. 922 (2014), noting that the case "stands for the proposition that unless a claimant is statutorily qualified to seek survivorship benefits, his or her available benefits subsequent to the death of a workers due to a compensable injury *are limited to whatever actual lost wages the decedent sustained between their injury and their death, as well as any medical expenses which can be attributed to the compensable injury.*" (Emphasis added.) Id. However, we held that the estate could proceed with a claim for survivor benefits.

On review, our Supreme Court reversed in part the decision of this board on the basis that "an estate is not a legal entity capable of advancing a claim for any form of

workers' compensation benefits …." Estate of Rock v. University of Connecticut, 323 Conn. 26, 28 (2016). The court, noting that the claimant's decedent never filed a workers' compensation claim or sought payment of any type of workers' compensation benefits, held that "[t]he legislature's use of the term 'legal representative' is not indicative of legislative intent to extend standing under § 31-294c to an estate. The commonly accepted meaning of the term 'legal representative' is executor, administrator, or heir." Id., 31. As such, the court "[concluded] that the board incorrectly determined that the [estate] had standing to pursue *any* form of workers' compensation benefits, including medical benefits and actual lost wages." (Emphasis added.) Id., 32.

At no point in the analysis of either this board or the Supreme Court was it ever stated, or even suggested, that any temporary total benefits to which the Rock claimant might have been entitled while alive could not have been awarded to his estate in care of a legal representative. Moreover, as the commissioner in the present matter correctly noted, this claim is easily distinguished from Rock because the instant claimant "filed his own claim for compensation during his lifetime and sought payment of total incapacity benefits on his own behalf prior to his death. He even testified at the formal hearing, attempting to secure payment of the benefits owed to him." August 29, 2019 Memorandum, p. 2.

The fund further contends that the commissioner erroneously held that this board's decision in Rock "was directly in conflict with the Supreme Court's decision in Morgan v. East Haven, [208 Conn. 576 (1988)], and was therefore not binding upon the trial commissioner." Appellant's Brief, p. 24. Again, we fundamentally disagree with

the fund's interpretation of both Morgan and the commissioner's alleged inferences regarding Morgan.

In Morgan, the claimant, a retired firefighter, was deemed eligible for heart and hypertension payments pursuant to General Statutes § 7-433c and was awarded weekly benefits for a permanent partial impairment of his cardiovascular system.[25] Upon the claimant's death, the ongoing weekly benefits were paid to his surviving spouse until her death, at which time the claimant's adult children sought an execution for the remaining payments to pass as a liquidated sum to the estate. The Morgan court, noting the distinction generally drawn between "special," or wage replacement, benefits such as temporary total/partial disability payments, and "specific" benefits such as permanent partial disability payments, determined that "benefits rendered pursuant to § 7-433c resemble special benefits under the workers' compensation statute …."[26] Id., 586; see also Brennan v. Waterbury, 331 Conn. 672 (2019).

[25] General Statutes § 7-433c (a) states in relevant part: "Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment."

[26] In Brennan v. Waterbury, 331 Conn. 672 (2019), our Supreme Court drew a distinction between "temporary incapacity benefits, also known as 'special' benefits, which continue only as long as there is an impairment of wage earning power, and … permanent disability benefits, also known as 'specific' benefits, which are provided for a fixed period in relation to the degree of impairment of a body part." Id., 685. The Brennan court ultimately "[concluded] that matured § 7-33c benefits—those that accrued during the claimant's lifetime—properly pass to the claimant's estate." Id., 693.

The court, referencing its prior holding in Bassett v. Stratford Lumber Co., 105 Conn. 297 (1926), for the proposition "that any unmatured part of a weekly compensation scheme does not succeed to the estate of the employee," id., 587, *citing* Bassett, supra, 305, concluded that because "[t]he remainder of the award … was payable weekly and remained unmatured … the holding in Bassett controls, and the weekly compensation that remains unpaid does not have to be paid to the estate of the deceased recipient." Morgan, supra, 587-88.

As the foregoing discussion indicates, neither Rock, supra, nor Morgan, supra, support the fund's contention that the temporary total disability benefits awarded to the claimant "abated" upon the death of the decedent. We are certainly not persuaded that the benefits awarded to the claimant under the unfortunate circumstances of this matter in any way resemble the unmatured portion of the § 7-433c permanent partial disability award that was the subject of dispute in Morgan. It should also be noted that in Morgan, the court observed that forty-six weeks of benefits had been commuted and previously paid in a lump sum to the claimant, and stated the following:

> Had the commuted payment been outstanding at the time of Doris Morgan's death, there is little dispute that the outstanding balance of the commuted amount would be due and payable to the estate. At the time of commutation, that portion of the compensation that was commuted became mature and, thus, immediately due and owing.

Id., 587.

In Greenwood v. Luby, 105 Conn. 398 (1926), a case which we do consider to be relevant to the present matter, our Supreme Court was called upon to examine "the right of the commissioner to award compensation for incapacity, where application therefore is

made in the lifetime of the employee, but his death follows before the award is made."[27] Id., 399-400. The court determined that the right to temporary total disability benefits:

> arises by operation of law as soon as the incapacity for the statutory period exists and it continues during the incapacity of the employee and only ends with his decease. If the award has been made, the accrued portion of it remaining unpaid belongs to his estate in accordance with the decisions quoted. If the right to compensation has accrued it belongs to the employee, his right to it survives to his estate ….

Id., 400.

As such, the court held that:

> The compensation accrued before the workman deceased, his right to it had vested, hence it survived to his estate. Had he collected it, it would have been his in lieu of the wages which, but for his incapacity, he would have received. It is possible that the accrued compensation constituting this award may go to the relatives of the deceased workman who were not his dependents, but it is far more probable that it will help meet the expenses which his incapacity and his illness preceding his decease have entailed.

Id., 401-402.

In the matter at bar, the commissioner made the following observation: "The policy implications of holding that the obligation to pay accrued [temporary total disability] benefits evaporates on the death of a claimant are profound: Such a rule would incentivize delay in payment to seriously injured workers as long as possible. Clearly, such a rule would not be consistent with the humanitarian purposes of our Act." August 29, 2019 Memorandum, p. 3, fn. 3. We agree. We also agree with the claimant that the fund's position in this matter advocates in favor of:

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[27] See also Morganelli v. Derby, 105 Conn. 545 (1927), wherein the court determined that "[t]he record discloses that proceedings for the recovery of compensation were begun by Matteo Morganelli in his lifetime, and that before the commissioner made his finding and award, Morganelli died. The commissioner correctly held that all compensation accrued and matured during his lifetime would belong to his estate …." Id., 546.

> leaving a totally disabled claimant without any remedy for his occupational injury. Such a situation would be contrary to the humanitarian purpose of our Act. The legislature recognized that and specifically created a fund for the payment of compensable claims where there is no employer or insurance coverage to provide payment to the claimant: The Second Injury Fund. The Fund exists precisely to pay on claims such as Mr. Beers'.

Claimant-Appellee's Brief, p. 16.

There is no error; the August 29, 2019 Finding and Award by David W. Schoolcraft, the Commissioner acting for the Eighth District, is accordingly affirmed. Insofar as any benefits due to the claimant may have remained unpaid during the pendency of this appeal, interest is awarded as required by General Statutes § 31-301c (b).[28]

Commissioners Randy L. Cohen and William J. Watson III concur in this Opinion.

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[28] We decline to address at any length the flurry of post-judgment motions filed by the fund in this matter, other than to affirm the commissioner's decisions on these motions and to point out that although the fund's motion to correct was filed three days after the extension date, the commissioner not only accepted the motion but also granted in part several of the sought-after corrections. We would also direct the fund's attention to Graham v. Olson Wood Associates, Inc., 323 Conn. 720 (2016), wherein our Supreme Court observed that "[g]iven the general informality of workers' compensation proceedings, the [Compensation Review] [B]oard has recognized that motions practice before the commission is relatively limited, with motions generally restricted to only those with a specific 'statutory, regulatory or due process basis,' namely, 'motions to preclude, motions to re-open and modify, certain motions for discovery, motions to correct and motions to dismiss.'" Id., 736-37, *quoting* Poventud v. Eagle Four, 6 Conn. Workers' Comp. Rev. Op. 72, 73, 775 CRD-5-88-10 (December 30, 1988).

Finally, insofar as the fund, in its motions to dismiss this claim for lack of subject matter jurisdiction, seems to be suggesting that the matter should have been dismissed because the claim was not filed prior to Raymark's dissolution, we would bring to the fund's attention the provisions of General Statutes § 31-294c (a) which specifically contemplate that a claim for occupational disease may be brought "within three years of the first manifestation of a symptom of the occupational disease …." In the present matter, the "manifestation of a symptom" did not occur until 2016, when the decedent was diagnosed with mesothelioma. As the commissioner accurately pointed out, "[d]uring its period of self-insurance, Raybestos paid into the Second Injury Fund through assessments. Raybestos was not only an authorized self-insurer, it contributed to a fund that was expressly designed to prevent injured workers from being left without compensation when their employers go under and cannot provide the compensation owed to those injured workers. I find no basis to deny Mr. Beers' claim simply because Raybestos failed prior to the time Mr. Beers' claim arose." August 29, 2019 Memorandum, pp. 12-13.