

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

GREGORY CAMPBELL, )  
Consolidated with TAMEEKA )  
CASSIDY, )  
 ) C.A. No. N09A-11-006 MMJ  
Employee-Appellant, )  
 )  
v. )  
 )  
CHRYSLER LLC, )  
 )  
Employer-Appellee. )

Submitted: January 26, 2012  
Decided: February 28, 2012

On Appeal from Order of the Industrial Accident Board  
**REMANDED**

**MEMORANDUM OPINION**

Michael P. Freebery, Esquire, The Law Firm of Michael P. Freebery, P.A.,  
Hockessin, Delaware, Attorney for Tameeka Cassidy

Michael R. Ippoliti, Esquire, Law Office of Michael R. Ippoliti, Wilmington,  
Delaware, Attorney for Gregory Campbell

Christine O'Connor, Esquire, Tybout, Redfearn & Pell, Wilmington,  
Delaware, Attorney for Employer-Appellee

**JOHNSTON, J.**

This appeal arises from the Industrial Accident Board's refusal to adjudicate two pending worker's compensation claims filed against Chrysler LLC by Claimants Tameeka Cassidy and Gregory Campbell.<sup>1</sup> The Board found that because Chrysler LLC filed for Chapter 11 bankruptcy, these claims were subject to the jurisdiction of the Bankruptcy Court.

Cassidy and Campbell contend that the Board's conclusion constitutes legal error and was not supported by substantial evidence.

## **FACTUAL AND PROCEDURAL CONTEXT**

### **Chrysler Bankruptcy**

In order to understand the issues involved in the underlying claims, the Court will briefly summarize the contextual background. On April 30, 2009, Chrysler LLC ("Chrysler") filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of New York. Pursuant to Section 362 of the Bankruptcy Code, such a filing effected an automatic stay of all proceedings against Chrysler. Chrysler Group LLC ("Chrysler Group") emerged from the bankruptcy as the newly formed corporation created to continue the business of Chrysler. Chrysler Group assumed *some* of the liabilities of Chrysler. The liabilities not identified as those assumed by Chrysler Group remained with Chrysler's successor

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<sup>1</sup> By Order dated April 12, 2011, the Superior Court consolidated Claimants' cases on appeal.

company, known as Old Carco LLC (“Old Carco”). It is undisputed that Old Carco remains in bankruptcy and those liabilities not assumed by Chrysler Group are subject to the automatic stay.

**Tameeka Cassidy**

On February 1, 2006, while working for Chrysler, Cassidy sustained an injury to the thoracic spine. Chrysler acknowledged that this injury was compensable and benefits were awarded.

On January 25, 2008, Cassidy was again injured while working for Chrysler. Cassidy sustained injury to her right arm. Chrysler acknowledged that this injury was compensable and benefits were awarded.

At some point in time, Cassidy filed a Petition to Determine Additional Compensation Due for permanent impairment resulting from the February 2006 injury.<sup>2</sup> In her petition, Cassidy alleged a 7% impairment to the thoracic spine. No hearing date was scheduled for the petition relating to this injury.

Cassidy filed a second Petition to Determine Additional Compensation Due for permanent impairment resulting from the January

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<sup>2</sup> Cassidy’s Petition to Determine Additional Compensation Due was not included in the record. Additionally, the record does not indicate the filing date of this Petition.

2008 injury.<sup>3</sup> Cassidy claimed a 15% impairment to the right arm. A hearing was scheduled for December 28, 2009 to consider Cassidy's Petition for her January 2008 injury.

In August 2009, Cassidy moved to have the petitions joined and heard together at the December 2009 hearing. A hearing on the Motion was scheduled for September 3, 2009.

Prior to the September 2009 hearing, a series of correspondence ensued between Cassidy and Chrysler Group's legal counsel. Chrysler Counsel contended that Cassidy's Petition relating to her February 2006 injury was a liability of Old Carco, and thus, was subject to the Bankruptcy Court's jurisdiction.

In response to Chrysler Counsel's letters, Cassidy requested production of documentation to support Chrysler's assertion. No documentation was provided to Cassidy.

### ***The Hearing***

On September 3, 2009, a brief hearing was held by the Board to consider Cassidy's Motion. Cassidy requested the Petitions be joined and heard at the December hearing. Alternatively, Cassidy argued that if the

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<sup>3</sup> Cassidy's second Petition to Determine Additional Compensation Due was not included in the record. Additionally, the record does not indicate the filing date of this Petition.

Petition concerning the February 2006 injury was subject to the Bankruptcy Court's jurisdiction, some documentation must be provided to verify that assertion.

Chrysler Counsel testified that Cassidy's February 2006 claim remained a liability of Old Carco, and therefore, must be dealt with by the Bankruptcy Court. Chrysler, however, offered no evidence or explanation as to why Cassidy's January 2008 claim had been identified as a liability assumed by Chrysler Group, but her February 2006 claim was not.

### ***The Board's Decision***

By Order dated November 2, 2009, the Board denied Cassidy's Motion to join her Petitions. The Board found that Cassidy's Petition concerning her February 2006 injury was subject to the jurisdiction of the Bankruptcy Court because it was a liability that remained with Old Carco. The Board explained that no further action would be taken on Cassidy's February 2006 claim "unless and until [the Board] receives notice that the automatic stay on this litigation has been lifted by the United States Bankruptcy Court of [sic] the Southern District of New York."<sup>4</sup>

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<sup>4</sup> The Court is without knowledge as to whether the Board conducted the December 2009 hearing to review Cassidy's January 2008 claim; and if so, the substance of the Board's findings.

The Board further found that Chrysler Group was a separate legal entity that “ha[d] no obligation to respond to a claim against Old Carco LLC or otherwise present proof of the bankruptcy stay.”

**Gregory Campbell**

On October 6, 2005, while working for Chrysler, Campbell sustained an injury to his right shoulder. Chrysler acknowledged that this injury was compensable and benefits were awarded.

On June 11, 2009, Campbell filed a Petition to Determine Additional Compensation Due, seeking payment for an alleged recurrence of total disability benefits. No action was taken by the Board on Campbell’s Petition. Therefore, Campbell filed a Motion to Compel the Board to schedule a hearing on the Petition. A hearing on Campbell’s Motion was scheduled for December 10, 2009.

As in the Cassidy case, a series of correspondence ensued between Campbell and Chrysler Counsel. Chrysler claimed that Campbell’s claim was a liability of Old Carco, and therefore, would need to be addressed by the Bankruptcy Court. In response to Counsel’s letters, Campbell requested production of documentation to support Chrysler’s assertion. No documentation was provided to Campbell.

### ***The Hearing***

The December 2009 hearing proceeded much like the hearing in the Cassidy matter. Campbell requested that Chrysler produce some documentation that his claim was subject to the Bankruptcy Court's automatic stay. According to Campbell, claims in other cases had been identified as liabilities assumed by Chrysler Group, while other claims were subject to the stay. Campbell argued that such a stay, therefore, was not "unlimited."

Chrysler Counsel testified that while some claims had been identified as liabilities assumed by Chrysler Group, Campbell's claim remained with Old Carco. As in the Cassidy case, Chrysler offered no evidence or explanation as to why some claims were assumed by Chrysler Group and others were not. According to Counsel: "There is no formula that was used to my knowledge."

### ***The Board's Decision***

By Order dated December 11, 2009, the Board denied Campbell's Motion to Compel the scheduling of a hearing on the Petition. The Board found that Campbell's claim was a liability that remained with Old Carco. Therefore, the Board declined to consider Campbell's Petition until it received notice that the automatic stay had been lifted.

## **STANDARD OF REVIEW**

On appeal from the Industrial Accident Board, the Superior Court must determine if the Board's factual findings are supported by substantial evidence in the record and free from legal error.<sup>5</sup> In reviewing the actions of the agency, the Court is required “to search the entire record to determine whether, on the basis of all the testimony and exhibits before the agency, it could fairly and reasonably reach the conclusion that it did.”<sup>6</sup> “Therefore, every part of the record before an administrative agency which is necessary to a review of its decision must be made part of the record brought before this Court.”<sup>7</sup> If the Court determines that the record is incomplete, the Court will remand the matter to the Board for further hearings or factual determinations.<sup>8</sup>

## **DISCUSSION**

It is undisputed that Chrysler filed for Chapter 11 bankruptcy, thus triggering an automatic stay pursuant to Section 362 of the Bankruptcy Code. It is equally undisputed that, notwithstanding the automatic stay, certain worker’s compensation claims filed against Chrysler were assumed by the new corporation created to continue the business of Chrysler –

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<sup>5</sup> *General Motors Corp. v. Jarrell*, 493 A.2d 978, 980 (Del. Super. 1985).

<sup>6</sup> *Nat’l Cash Register v. Riner*, 424 A.2d 669, 674-75 (Del. Super. 1980).

<sup>7</sup> *Perrine v. State*, 1994 WL 45341, at \*1 (Del. Super.) (citing *Henry v. Dep’t of Labor*, 293 A.2d 578, 581 (Del. Super. 1972)).

<sup>8</sup> 29 *Del. C.* § 10142(c).



Chrysler Group. Those claims not identified as liabilities assumed by Chrysler Group, remained with Chrysler's successor company – Old Carco – and are subject to the automatic stay.

Here, the Board found that Cassidy's February 2006 claim and Campbell's claim were not liabilities assumed by Chrysler Group, and therefore, were subject to the automatic stay. In reaching these conclusions, the Board relied solely on Chrysler Counsel's testimony.

It appears to the Court, however, that a stipulation entered into by Old Carco LLC controls the pending matters.<sup>9</sup> Attached to the stipulation is an April 28, 2010 letter authored by Chrysler Group that provides, in pertinent part:

Chrysler Group has agreed to assume all liabilities for worker's compensation claims asserted in any state against Old Carco, subject to the terms contained in this letter.

\* \* \*

In the State of Delaware only, this assumption includes worker's compensation claims that relate to the period on or prior to June 10, 2009, **but only to the extent that** the claims were properly made and filed with the State of Delaware on or prior to June 10, 2009; and further provided, that the aggregate

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<sup>9</sup> Stipulation and Agreed Order Approving Transfer of Certain Surety Bonds and Related Collateral to Chrysler Group LLC (f/k/a/ New Carco Acquisition LLC), *In re* Old Carco LLC (f/k/a Chrysler LLC), Case No. 09–50002 (Bankr. S.D.N.Y.) (June 22, 2010) (ORDER).

amount of such assumed liabilities in the State of Delaware shall not exceed \$18,200,000.<sup>10</sup>

Because this stipulation and accompanying attachment were absent from the record, the Court finds the Board record incomplete.

The Court cannot determine whether the claims of Cassidy and Campbell were properly made and filed with the State of Delaware on or prior to June 10, 2009. If the claims were timely made and filed, the liability would have been assumed by Chrysler Group. The claims would not be subject to the Bankruptcy Court's automatic stay and the Board would have jurisdiction to adjudicate the claims.

**THEREFORE**, the decision of the Industrial Accident Board is **REMANDED** with instructions that the Board make further findings of fact, consistent with this decision.

**IT IS SO ORDERED.**

*/s/ Mary M. Johnston*  
The Honorable Mary M. Johnston

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<sup>10</sup> Letter from Thomas E. Gunton, Assistant Secretary, Chrysler Group LLC to Mr. Kolka (Apr. 28, 2010) (emphasis in original) (Exhibit A to June 22, 2010 Order).