

**Erie County Med. Ctr. Corp. v State of New York  
Workers' Compensation Bd.**

2013 NY Slip Op 33843(U)

January 3, 2013

Supreme Court, Erie County

Docket Number: 2011-4985

Judge: Shirley Troutman

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STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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ERIE COUNTY MEDICAL CENTER  
CORPORATION, COUNTY OF NIAGARA,  
RICH PRODUCTS CORPORATION, COUNTY  
OF WYOMING, NEW YORK STATE ASSOCIATION  
OF COUNTIES AND SIL DAN, JR.,

Plaintiffs,

vs

DECISION AND  
ORDER

STATE OF NEW YORK WORKERS'  
COMPENSATION BOARD and ROBERT  
E. BELTON, as Chair of the New York  
Workers' Compensation Board,

Index No.:2011-4985

Defendant.

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COUNSEL:

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Attorney for Plaintiffs

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Attorney General of the State of New York  
KATHLEEN M. KACZOR, ESQ.  
Attorney for Defendants

FILED  
2013 JA - 7 PM 1:04  
ERIE COUNTY  
CLERK'S OFFICE

TROUTMAN, J.

Defendants move to dismiss pursuant to CPLR §3211 on the grounds, *inter alia*, that Plaintiffs lack standing, failed to exhaust their administrative remedies, and that the matter should be converted to a Special Proceeding pursuant to Article 78 of the CPLR because Plaintiffs complain that Defendants

failed to perform a duty enjoined on them by law. They allege that the Plaintiffs lack standing, the threshold issue, because they have not claimed concrete injuries but, instead, have made claims that are speculative, tenuous, and conjectural. They cite Benson v. Roswell Park Cancer Inst. Corp. Merit Board, 305 AD2d 1056 (4<sup>th</sup> Dept., 2003) and Niagara County v. Power Authority of State of New York, 82 AD3d 1597 (4<sup>th</sup> Dept., 2011). In support of this position they state that Plaintiffs allege that parties are denied hearings by a set of procedures the Board adopted in 2010 called the “Streamlined Conciliation Process” but that their position is inaccurate as the process permits parties to object and request a hearing at various times during the case. If a party has an objection during a case, it/he/she may request a hearing. Review procedures are also included in the “Streamlined” scheme. Therefore, Defendants argue that if a particular party can allege harm from some decision or step in the process, such claimant must exhaust the remedies available under the Workers Compensation Law in keeping with constitutional and legislative mandates. Defendants state that these Plaintiffs cannot avoid the statutorily mandated steps and choose the Supreme Court as the forum to complain about the process, especially where they have not suffered a genuine, concrete injury, as here. Defendants also allege that the court lacks subject matter jurisdiction to hear Plaintiffs’ complaint because it involves open claims for which the state constitution and the legislature created an exclusive system for workers’ compensation by conferring exclusive jurisdiction in the Workers’ Compensation Board, the third department of the Appellate Division of Supreme Court, and the Court of Appeals. They allege that this exclusive jurisdiction extends beyond specific decisions concerning injured workers’ compensation to include the review process, as well. They cite Parella v. Harrod Steel Erection Co., 19 AD2d 451 (3<sup>rd</sup> Dept., 1963) and Mtr. of Huang Sheng Ku v. Dana Alexander, Inc., 12 AD3d 988 (3<sup>rd</sup> Dept., 2004).

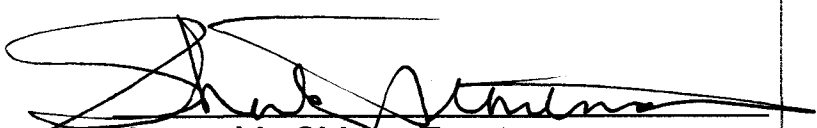
Plaintiffs agree that standing is the threshold issue and oppose Defendants' motion on the ground that they have standing to sue because they satisfy the two-part test promulgated by the Court of Appeals in New York State Ass'n. of Nurse Anesthetists v. Novello, 2 NY3d 207 (2004). They say that they have suffered (1) an "injury in fact" because the "Streamlined Conciliation Process" denies parties constitutionally mandated hearings and (2) that they fall within the zone of interests the Workers' Compensation Board was empowered to protect. They state that they have open, pending cases before the Board with financial stakes in them, and, therefore, have statutory rights to hearings that they claim have been denied. Among other things, a particular failing in the Streamlined Conciliation Process that they cite is that the new rules and regulations now permit a proposed decision to be issued prior to a hearing and by an administrative law judge. Under the former Conciliation Process the law judge reviewed a decision that had been issued by a Conciliation Counsel but under the Streamlined Conciliation Process the roles of the counsel and the law judge are merged because the law judge prepares the Proposed Decision and also reviews it in the first instance if there is an objection. The new scheme further permits the law judges to assess costs, attorney fees, and other penalties if the law judge believes the party wrongly objected to the decision. These features of the new process work to deny parties due process rights and statutorily mandated protections and constitute the "injury in fact" requirement for standing to sue. They argue that the injury is not speculative, contingent or dependent upon a future act by Defendants. Plaintiffs also aver that the proper avenue to challenge the Workers' Compensation Board's implementation of the "Streamlined Conciliation Process" on constitutional grounds is a declaratory judgment action as opposed to an Article 78 Special Proceeding as urged by Defendants. They cite Brentwood Union Free School Dist. v. State of New York, 135 Misc.2d 1105 (NY S. Ct., Suffolk Co, 1987), Mtr. of Morgenthau v. Erlbaum,

59 NY2d 143 (1983), and Roulan v. County of Onondaga, 90 AD3d 1617 (4<sup>th</sup> Dept., 2011). Thus they argue that this court has jurisdiction.

Upon review of the submissions of the parties, the case law cited, and upon hearing the arguments of counsel this court determines that the New York State Constitution empowered the legislature to enact the Workers' Compensation Law and to confer upon the Workers' Compensation Board exclusive jurisdiction to hear and decide claims brought by injured workers and to promulgate rules and regulations to effect this mandate. As a result, parties affected by a decision must exhaust the administrative remedies available in the Workers' Compensation Law scheme. While this does not mean that rules and regulations promulgated under the Workers' Compensation Law cannot be challenged on constitutional grounds, it does mean that such parties must have standing to sue. This court finds that Plaintiffs have not met their burden of establishing this threshold issue because they have not shown that they have suffered genuine injuries caused by the Streamlined Conciliation Process rules and regulations. Their assertion that the injury is the denial of hearings at various stages of a case including prior to issuance of a proposed decision is not supported by the mere fact that fewer hearings have been held since implementation of the scheme. No showing has been made that any claimants, and in particular, these Plaintiffs, suffered a financial or other injury because of some aspect of the new procedure. Their additional claim that they have standing because of cases they will have in the future is insufficient to confer standing because it requires this court to speculate about specific injuries a party might or might not assert in the future. Consequently, these Plaintiffs lack standing to bring a declaratory judgment action to challenge the constitutionality of the rules and regulations the Board promulgated as the "Streamlined Conciliation Process" in implementing the Workers' Compensation Law. Further, because the jurisdiction with respect to open claims lies with the Board

and the avenue for challenging a particular decision of the Board is by exhaustion of the administrative remedies available in the Workers' Compensation Law followed by appeal to the Third Department of Supreme Court or to the Court of Appeals, this court lacks jurisdiction to consider issues pertaining to the open claims the Plaintiffs allege are at issue in this case. Additionally, where the challenge involves a claimed violation of a law, rule, or regulation by the Board, the avenue is by Special Proceeding pursuant to Article 78 of the CPLR. Defendants have, in the alternative, asked this court to find that the substance of Plaintiffs' complaint is appropriate to an Article 78 proceeding, to convert this action into such a proceeding, and dismiss because the statute of limitations has expired, or simply apply the statute of limitations that pertains to Article 78 proceedings and dismiss because it has expired. As this court has found as a threshold issue that the Plaintiffs lack standing to sue with respect to their declaratory judgment action, the court need not reach determinations with respect to Article 78 or the applicable statute of limitations.

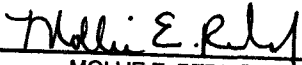
ACCORDINGLY, Defendant's motion to dismiss is hereby granted.  
 SO ORDERED.



Honorable Shirley Troutman  
 Justice of Supreme Court

**GRANTED**

JAN 03 2013

BY   
 MOLLIE E. REDMOND  
 COURT CLERK