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WC Appellate Division Decision issued on November 3, 2017 – Challenging PI Determination

Shortly after the Law Court's landmark decision in *Bailey v. City of Lewiston*, 2017 ME 160 (July 20, 2017), the Appellate Division has had an opportunity to apply the holding of that decision in a claim involving an attempt to revise a prior PI determination. The *Bailey* decision is extremely significant, as the Court held that there may not be a redetermination of PI once a percentage has been established by Board decree. In *Puiia v. Newpage Corp.*, Me. W.C.B. No. 17-36 (App. Div. 2017), the employee sustained separate respiratory injuries in 2001 and 2004 and also a gradual orthopedic injury to several portions of the body in 2005. In a 2008 decree the employee was awarded ongoing benefits for partial incapacity based upon the two respiratory injuries. The employee then filed Petitions to Determine the Extent of Permanent Impairment for the three injuries, and the parties entered into a Consent Decree establishing 19% PI due to the combined effects of all dates of injury. The Consent Decree did not recite individual impairment assessments pertinent to each date of injury. The recent litigation began when the employer filed Petitions to Determine the Extent of Permanent Impairment with respect to the two respiratory injuries, requesting the Board to assign a PI assessment to the injuries individually. The presiding ALJ denied the petitions on the grounds that the res judicata effect of the 2010 Consent Decree prevented the Board from further intervening to assign specific percentages on a per-injury basis. The ALJ also found that the medical evidence was insufficient to assign individual PI ratings. Although litigation in the case began long before the *Bailey* decision was issued, the outcome was heavily influenced by that opinion. The Appellate Division affirmed the decision of the ALJ, and specifically relied upon the *Bailey* decision. The Division found that the 2010 Consent Decree was a valid and final adjudication of the PI issue, and that *Bailey* prevented the employer from seeking individual assessments post-decree. The panel found that res judicata precluded the employer from re-opening the issue after there had been a valid and final Board determination. As a result, the employer could not obtain an allocation of the percentage of impairment attributable to each of the injuries individually.

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