

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF  
INDUSTRIAL ACCIDENTS**

**BOARD NO. 031051-00**

George Cutter  
Wentworth Institute of Technology  
Travelers Insurance Co.  
Workers' Compensation Trust Fund

Employee  
Employer  
Petitioner  
Respondent

**REVIEWING BOARD DECISION**

(Judges Levine, McCarthy and Maze-Rothstein)

**APPEARANCES**

Dorothy M. Linsner, Esq., for the insurer  
Thomas M. Wielgus, Esq., for the Workers' Compensation Trust Fund

**LEVINE, J.** The Workers' Compensation Trust Fund ("Trust Fund") appeals from an administrative judge's decision awarding reimbursement under § 37 for an injury to George Cutter, now deceased, which occurred on or about March 9, 1990. Mr. Cutter received benefits pursuant to §§ 34 and 35 from May 14, 1990 to August 23, 1999, the date of death. (Dec. 4.) The Trust Fund argues that the decision should be reversed because the reimbursement claim was time-barred and because the award of § 50 interest and of attorney's fees to the insurer was contrary to law. We agree with the Trust Fund that, based on our recent decision in Carmilia v. General Elec., 15 Mass. Workers' Comp. Rep. 261 (2001), it was error to award § 50 interest. We also agree that there is no authority to award the insurer attorney's fees. However, we do affirm the award of § 37 reimbursement.

As to the Trust Fund's argument that the claim for reimbursement was time-barred by various "borrowed" statutes of limitations or the equitable doctrine of laches, the case is governed by our recent decision in Walsh v. Bertolino Beef Co., 16 Mass. Workers' Comp. Rep. \_\_\_\_ (April 18, 2002). There, we concluded that no statute of limitations applies where none existed for § 37 reimbursement claims based on injuries pre-dating the 1991 amendment to § 37. That amendment inserted a rolling two-year statute of

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limitations for dates of injuries occurring on or after December 23, 1991. The § 37 petition based on Mr. Cutter's March 9, 1990 injury was not subject to a statute of limitations, and the equitable doctrine of laches also does not apply. Walsh, supra; accord, Lippett v. New England Patriots, 16 Mass. Workers' Comp. Rep. \_\_ (May 6, 2002).

We do agree with the Trust Fund that it was error for the judge to award the insurer attorney's fees. "In general, a prevailing party may not recover attorney's fees in the absence of statutory authorization or a contractual provision." Lincoln St. Realty Co., v. Green, 374 Mass. 630, 631 (1978)(footnote omitted). Except in the cases of unreasonable litigation or fraud, see §§ 14(1) and (2), c. 152 does not authorize the payment of attorney's fees to insurers. Accordingly, the award of fees to the insurer is reversed.

The decision awarding § 37 reimbursement is affirmed. The award of § 50 interest and attorney's fees to the insurer is reversed.

So ordered.

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Frederick E. Levine  
Administrative Law Judge

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William A. McCarthy  
Administrative Law Judge

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Susan Maze-Rothstein  
Administrative Law Judge

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