

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 009135-99

Richard Lewis, Jr.
O'Hara Motors
Universal Underwriters

Employee
Employer
Insurer

REVIEWING BOARD DECISION
(Judges Carroll, Levine and Wilson)

APPEARANCES

Joseph M. Spinale, Esq., for the Insurer
Pedro Benitez-Perales, Esq., for the Workers' Compensation Trust Fund

CARROLL, J. The insurer appeals the decision of an administrative judge in which its claim for reimbursement pursuant to G.L. c. 152, § 37, was denied and dismissed. On appeal, both parties agree that the judge's decision should be recommitted for further findings in accordance with the reviewing board's recent decision in Cosgrove v. Penacock Place, 15 Mass. Workers' Comp. Rep. 166 (2001). Accordingly, we recommit the case.

We briefly set forth the procedural facts of this case. The employee and insurer settled the employee's workers' compensation claim by way of lump sum agreement on October 7, 1997. (Dec. 4-5.) Subsequent thereto, the insurer filed a claim for reimbursement pursuant to § 37. The Trust Fund denied the claim and the matter was conferenced before an administrative judge pursuant to § 10A. The claim was denied at conference and the insurer appealed to a de novo hearing. (Dec. 3.) Following that hearing, the administrative judge issued a decision in which the insurer's claim was denied and dismissed. (Dec. 7.)

When the administrative judge issued his decision in this matter, he did so without the benefit of our recent holding in Cosgrove, supra. In Cosgrove, we recommitted the case for further findings that address the reasonableness of the § 34A

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allocation in the lump sum agreement and the appropriate amount of reimbursement. Cosgrove, supra. This case, too, must be recommitted for the same reasons. Upon reconsideration, the administrative judge should utilize the guidance provided by Cosgrove in reaching his determination on the pertinent matters therein and on the ultimate question of § 37 reimbursement.

The case is recommitted for further findings consistent with this opinion.

So ordered.

Martine Carroll
Administrative Law Judge

Frederick E. Levine
Administrative Law Judge

Sara Holmes Wilson
Administrative Law Judge

Filed: **October 31, 2001**
MC/jdm