

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF  
INDUSTRIAL ACCIDENTS**

**BOARD NOS. 028960-01  
047303-03  
013182-04**

Lawrence Dilisio  
R. Dilisio, Inc.  
Credit General Insurance Co.  
Granite State Insurance Co.  
American Home Assurance Co.

Employee  
Employer  
Insurer  
Insurer  
Insurer

**REVIEWING BOARD DECISION**

(Judges Fabricant, McCarthy and Costigan)

**APPEARANCES**

Judson L. Pierce, Esq., for the employee  
Kevin B. O'Leary, Esq., for Credit General Insurance Co.  
Thomas F. Finn, Esq., for Granite State and American Home Assurance Ins. Cos.

**FABRICANT, J.** American Home Assurance Co., the insurer found liable to pay § 34 benefits in this successive injury claim, appeals the administrative judge's decision. One issue argued on appeal warrants recommitment for further findings.<sup>1</sup>

The employee injured his back while working on July 26, 2001. At that time, his employer was insured for workers' compensation by Credit General Insurance Company. The employee received conservative treatment, but never fully recovered. He worked light duty until he underwent surgery on October 8, 2003. However, surgery was not successful in alleviating the employee's pain. The employee went back to very restricted work in April 2004, and worked light duty a few hours per day until January 18, 2005, when he underwent a second unsuccessful surgery. (Dec. 3-4.)

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<sup>1</sup> The insurer has raised additional issues on appeal. Although we do not intend to disturb the judge's findings regarding these other issues, we do recognize that the judge's further consideration of the specified medical evidence may, in fact, require amendment to one or more of those findings.

The impartial physician opined that the employee's post-injury work activities for nearly two years before his first surgery contributed to his disability and need for treatment. (Dec. 4.) Finding the employee's post-April 2004 work activities also contributed to the employee's continuing disability, the judge concluded American Home Assurance, the insurer on the risk during this last period of employment, was liable for the payment of compensation. (Dec. 5-6.)

It is undisputed by the parties that the judge allowed the introduction of additional medical evidence to address the period of incapacity after the employee's second surgery on January 18, 2005,<sup>2</sup> some seven months after the impartial examination. The employee and American Home Assurance also agree they both timely submitted additional medical reports to be included in the record evidence. However, the judge did not list these reports as exhibits in his decision, or otherwise comment on their contents. (Dec. 1.) This is error, necessitating recommitment. "[A] judge's decision must clearly identify 'all documents offered by the parties, marked as exhibits and considered in reaching his conclusions.'" Stevens v. City of Brockton, 13 Mass. Workers' Comp. Rep. 166, 168 (1999), citing Warnke v. New England Insulation Co., 11 Mass. Workers' Comp. Rep. 678, 680 (1997).

Accordingly, we recommit the case for the judge to consider the additional medical evidence admitted, and to make further findings consistent with this opinion.

So ordered.

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Bernard W. Fabricant  
Administrative Law Judge

Filed: **December 21, 2007**

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William A. McCarthy  
Administrative Law Judge

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Patricia A. Costigan  
Administrative Law Judge

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<sup>2</sup> This was, in fact, the only period of incapacity the employee claimed. (Dec. 2, n.1.)