

# State of New York Court of Appeals

To be argued Monday, September 9, 2013

## No. 145 Matter of Hroncich v Con Edison

Antonio Hroncich, a long-time employee of Consolidated Edison, was diagnosed in 1993 as having asbestosis and asbestos-related pleural disease. The Workers' Compensation Board found he was permanently partially disabled as a result of occupational lung disease and awarded him disability benefits in proportion to his lost earning capacity. He later developed thyroid cancer, which spread to his lungs.

Hroncich died in 2007 and his wife, Gaudenzia Hroncich, filed this claim for death benefits under Workers' Compensation Law § 16. Her medical expert testified that her husband's death was attributable 20 percent to his work-related illnesses and 80 percent to thyroid cancer. The Workers' Compensation Law Judge held that Hroncich's death was causally related to his occupational lung disease and that liability for benefits may not be apportioned between work-related and non-work-related causes of death. The Workers' Compensation Board upheld the determination.

The Appellate Division, Third Department affirmed, rejecting Con Edison's argument that the claimant's death benefits should be apportioned to reflect the degree to which thyroid cancer was the primary cause of her husband's death. The court cited its 2009 decision in Matter of Webb v Cooper Crouse Hinds Co. (62 AD3d 57), which held that apportionment between work-related and non-work-related causes of death is not available based, in part, on "the absence of any indication in Workers' Compensation Law § 16 that death benefits are to be apportioned in the same manner as disability benefits" under Workers' Compensation Law § 15(7).

Con Edison argues, "The plain language of section 15(7) expressly provides that a previous disability will not preclude compensation for a later injury or 'death resulting therefrom,' and that compensation for death will be determined on the basis of the decedent's 'earning capacity at the time of the later injury' causing death. This section clearly authorizes apportionment in death benefit claims. The Legislature used the term 'death' twice in section 15(7) and did so to apply the apportionment provisions to death benefit claims." It says "apportionment appropriately confines compensation to the injury caused by employment" and "prevents a windfall to claimants at the expense of employers for injuries that were not related to employment."

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