

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

AJAX CONSTRUCTION COMPANY)

)

VS.)

W.C.C. 2004-07659

)

LIBERTY MUTUAL INSURANCE COMPANY)
AND THE BEACON MUTUAL INSURANCE)
COMPANY)

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division pursuant to the claims of appeal filed by each of the parties to this case which involves a dispute as to which insurance carrier should pay workers' compensation benefits to an employee of a Rhode Island company who was injured on a job site in Massachusetts. The employer, Ajax Construction Company (Ajax), filed a petition to determine a controversy pursuant to R.I.G.L. §§ 28-30-13 and 28-35-12(b), asking the court to determine which insurer should pay the claim of its employee, Mark Furia. The trial judge ordered The Beacon Mutual Insurance Company (Beacon) to pay benefits to the employee and also ordered Liberty Mutual Insurance Company (Liberty Mutual) to reimburse Beacon for fifty percent (50%) of all benefits paid. After reviewing the extensive record in this matter and considering the arguments of the respective parties, we find that under the particular circumstances of this case, Beacon is solely responsible for the payment of Mr. Furia's claim.

The underlying facts of this case are not in dispute. On October 26, 2004, Mr. Furia was injured while working on a job site in Milton, Massachusetts. He had been hired by Ajax at their headquarters in Harrisville, Rhode Island approximately fifteen (15) years earlier. He worked as an ironworker for Ajax assembling, bolting, and welding pieces of steel or other metals to erect the skeletons of buildings. In his deposition, the employee testified that although he lived in Rhode Island, he primarily worked in Massachusetts and filed income tax returns in both Rhode Island and Massachusetts.

Shortly after his injury, Mr. Furia, through his attorney, filed an original petition against Ajax in W.C.C. No. 2004-07614. A pretrial order was entered on December 22, 2004 establishing that he sustained a work-related injury to his right hip resulting in total incapacity beginning October 27, 2004. On the same date, an interlocutory order was entered in the present matter ordering Beacon to pay benefits due under the pretrial order in W.C.C. No. 2004-07614. Subsequently, a pretrial order was entered on May 12, 2005 in W.C.C. No. 2005-02590 finding that Mr. Furia's disability had ended and discontinuing his weekly benefits.

The only other testimony came from Donald Morel, the president of Ajax. He explained that the company is located in Rhode Island, although most of their work is in Massachusetts. All of the administrative work is performed at the Rhode Island office, including processing of paychecks, and the heavy equipment is stored in the yard at that location when it is not at a job site. Mr. Morel testified that when his employees are working in Massachusetts, he withholds Massachusetts income tax from their paychecks and pays unemployment taxes in Massachusetts.

Mr. Morel was aware that the company was required to carry workers' compensation insurance in each state it was working in. The company's insurance agent, Christopher & Regan Insurance, obtained a policy from Liberty Mutual to cover its employees while working in

Massachusetts for the year 2004. The estimated wages of the company's employees while working in Massachusetts, including Mr. Furia, were utilized to calculate the annual premium paid to Liberty Mutual, which was Two Hundred Eighty-two Thousand Seven Hundred Seven and 00/100 (\$282,707.00) Dollars. The insurance agent also obtained a policy from Beacon to cover its liabilities in Rhode Island. The annual premium for this policy, which was approximately Sixty-nine Thousand and 00/100 (\$69,000.00) Dollars, was based upon estimated wages of all employees working in Rhode Island. Documents obtained under subpoena issued to Christopher & Regan Insurance indicate that the wages of administrative and clerical personnel made up the bulk of the estimated payroll as compared to employees working on construction jobs in Rhode Island.

Ajax filed a first report of injury regarding Mr. Furia's injury with Liberty Mutual. Shortly thereafter, a representative from Liberty Mutual spoke with Mr. Morel on the telephone inquiring about where Mr. Furia lived, where he was hired, and where he had done most of his work. Within a week or so of this conversation, Ajax received a letter from Liberty Mutual denying Mr. Furia's claim, which Mr. Morel forwarded to his insurance agent. While the employee was in Rhode Island Hospital, in traction and heavily sedated, he was visited by a representative of Liberty Mutual who informed him that it was a "no brainer" that his case was a Rhode Island workers' compensation claim because the employee was hired in and lived in the state and the employer's place of business was located in Rhode Island. This representative from Liberty Mutual went so far as to give Mr. Furia the business card of an attorney who handled Rhode Island workers' compensation claims. Subsequently, Mr. Furia did secure the services of an attorney who filed an original petition for workers' compensation benefits in Rhode Island.

The parties introduced voluminous records obtained from Christopher & Regan Insurance, Liberty Mutual, Beacon, Ajax, and the Department of Labor and Training containing insurance policies, underwriting information, correspondence, and various other documents relating to workers' compensation insurance policies obtained by Ajax covering the period from 2003 to 2005. The depositions of Jessica Reardon, a case manager from Liberty Mutual, and Mark Furia, the employee, were also introduced into evidence.

After reviewing the evidence in this matter, the trial judge concluded that Beacon was liable for the workers' compensation benefits due to Mr. Furia under the Rhode Island Workers' Compensation Act because the insurer is obligated, pursuant to R.I.G.L. § 28-36-5, to cover the entire liability of an employer to its employees. He also determined that Ajax had a dual or overlapping policy of insurance with Liberty and that Liberty should have some responsibility for Mr. Furia's claim in light of the premium paid to it by Ajax. Therefore, the trial judge ordered Beacon to pay the full amount of benefits to and on behalf of Mr. Furia and ordered Liberty to reimburse Beacon for fifty percent (50%) of those benefits. In his bench decision, the trial judge also acknowledged that Beacon would have the right to retroactively charge Ajax additional premium for coverage of Mr. Furia's claim and other similar claims. He further directed that Liberty had the duty to reimburse Ajax for any additional premium charged by Beacon in this instance, although this directive was not incorporated into the decree entered in this matter.

All of the parties – Ajax, Liberty, and Beacon – filed claims of appeal. Beacon filed eleven (11) reasons of appeal; Ajax filed four (4); and Liberty filed nine (9). We believe that they can all be summarized into several basic issues. Beacon and Ajax contend that the trial judge erred in that Liberty should have been found one hundred percent (100%) liable for Mr.

Furia's claim because Liberty collected a considerable premium based upon his and other ironworkers' wages, whereas Beacon did not include such a risk in assessing its premium. Beacon further argues that Mr. Furia qualified as a Massachusetts employee under the terms of the Liberty policy and therefore Liberty should be held responsible for his claim whether it was filed in Massachusetts or Rhode Island. Liberty takes issue with the trial judge's conclusion that Liberty's coverage overlapped with Beacon and his order that Liberty reimburse Beacon for fifty percent (50%) of the benefits due Mr. Furia. Liberty also advocates that Mr. Furia did not qualify as a "Massachusetts employee" for purposes of the section of its policy providing for payment of out-of-state claims. After extensive review and consideration of the complex issues presented by this case, we deny the appeals of Ajax and Beacon, and grant the appeal of Liberty.

Initially we would note that the Workers' Compensation Court has been granted jurisdiction to hear and determine disputes between an insurance carrier and an employer under an insurance contract. Section 28-30-13 of the Rhode Island General Laws provides as follows:

(a) Any controversy over which the workers' compensation court has jurisdiction in accordance with chapters 29 – 38 and chapter 53 of this title, including compensation, . . . a dispute between an insurance carrier and an employer under a workers' compensation insurance contract, except disputes under the jurisdiction of the workers' compensation appeals board established pursuant to § 27-9-29, . . . shall be submitted to the court in the manner provided in chapters 33 and 35 of this title.

The present matter falls within this statutory grant of jurisdiction.

We will first address whether Beacon is liable for payment of Mr. Furia's claim. It appears from the record that there is no dispute that Mr. Furia was hired at Ajax's offices in Rhode Island. As such, Mr. Furia is an employee subject to the Rhode Island Workers' Compensation Act. Section 28-29-1.3 of the Rhode Island General Laws states that the Rhode Island Workers' Compensation Act "shall apply to any and all employees, as defined in § 28-29-

2(4), who are injured or hired in the state of Rhode Island.” Section 28-29-2(4) defines an employee as “any person who has entered into the employment of or works under contract of service or apprenticeship with any employer...” By virtue of his hiring in Rhode Island, Mr. Furia had the right to file his workers’ compensation claim in Rhode Island, despite the fact that his injury occurred in Massachusetts.

Beacon provided an insurance policy to Ajax which included coverage for workers’ compensation claims under the Rhode Island Workers’ Compensation Act. One section of the policy lists the classes of workers and estimated payroll for each classification which were utilized by Beacon to arrive at an annual premium for the insurance policy. On the information page of the policy only four (4) classifications are listed because that is all that fits within the confines of the form; however, it is noted that an expansion page is utilized to list additional classifications. Contrary to a statement in the trial judge’s decision and statements contained in the memoranda submitted to this panel by Beacon and Ajax, this expansion page does list steelworkers and ironworkers, or similar construction classifications, which would include an employee performing the type of work Mr. Furia was doing at the time of his injury. It is clear from these documents that the bulk of the estimated payroll listed is for clerical and administrative employees and only a minimal amount was listed for the actual construction classifications. The small amount of payroll listed for the construction classifications was apparently based upon an estimate of wages of employees working on job sites within the state of Rhode Island. Mr. Morel, the company president of Ajax, had testified that the majority of their work was at job sites in Massachusetts.

This discrepancy in the premium collected is the basis for the primary argument of Beacon and Ajax – that Liberty collected significantly more of their premium based on the

estimated construction workers' payroll than Beacon did and therefore should be held responsible for Mr. Furia's claim. Unfortunately, we have not found any statute or case law which supports this proposition or provides support for the concept that the insurer who utilized the injured worker's wages in calculating their premium is the one to be held responsible. On the contrary, we find that the Rhode Island statute dictates the outcome in this case and places no weight on which insurer included the injured worker's wages in their premium in determining which insurer is responsible.

Section 28-36-5 of the Rhode Island General Laws states in pertinent part that "[e]very policy shall cover the entire liability of the employer under chapters 29 – 38 of this title. . . ." We are unaware of any decision of the Rhode Island Supreme Court specifically addressing this section of the statute and its application; however, Professor Arthur Larson's treatise on workers' compensation does provide some guidance. See Larson's Workers' Compensation Law, §§ 151.01- 151.02, pp. 151-2 to 151-7 (2001)(Revised 2007). Based on the language of the Rhode Island statute, it would fall in the category of "full-coverage" statutes described in Larson. A majority of courts in states with such "full-coverage" statutes have interpreted this language to mean that the insurance policy is deemed to cover all employees of the insured in all occupations and all businesses. Id. at 151-3. As a matter of public policy, the Legislature in Rhode Island has mandated a certain minimum coverage in insurance contracts, regardless of the intent or agreement between the insurer and employer to limit that coverage. Thus, the determination of the scope of the liability of the insurer is removed from the hands of the actual parties to the insurance contract and is dictated by the provisions of the Workers' Compensation Act.

Professor Larson explains the reasons for this type of state intervention into a private contract as follows:

One is that insurers, if allowed to select some risks and not others, would naturally pick the best risks and exclude the worst. The principal reason, however, is probably the convenience of being able to assume that, so far as the employee is concerned, the liability of the insurer is completely coextensive with that of the employer, so that one proceeding can settle the liability of both. Otherwise, the employee may frequently have two cases to litigate – the first to establish the employer’s substantive liability, and the second to show that the insurer’s policy covered that liability. Under a partial insurance system, employees would never be sure whether they were protected, employers would likewise always be in some doubt whether common-law liability and even criminal penalties lurked behind the exclusion clauses, and everyone would have more uncertainty and more litigation.

Id. at 151-2.

In the present matter, Beacon provided an insurance policy to Ajax to cover its liabilities to its employees under the Rhode Island Workers’ Compensation Act. Mr. Furia filed a claim in Rhode Island pursuant to the provisions of the Act which allowed for jurisdiction over his claim because he had been hired by Ajax in Rhode Island. Mr. Furia was awarded workers’ compensation benefits pursuant to the provisions of the Act. In accordance with the language of R.I.G.L. § 28-36-5, Beacon is liable for the benefits awarded to Mr. Furia under the Act in Rhode Island. The fact that Beacon, in determining the premium to charge for their policy, did not take into account the possibility that an employee of Ajax who was injured in Massachusetts would file for benefits in Rhode Island is not relevant to our decision. Under Rhode Island law, an employee who is hired or injured in the state may file for benefits under the Rhode Island Workers’ Compensation Act. Beacon cannot restrict the class of employees it covers to only those actually injured in Rhode Island as such a restriction would be in contravention of the statute.

Beacon contends that Mr. Furia qualifies as a “Massachusetts employee” under the terms of the Liberty policy providing for payments to be made under the workers’ compensation law of

another state, and since Liberty received premium from Ajax based on estimated payroll of ironworkers such as Mr. Furia, Liberty should be found liable for Mr. Furia's claim. We believe that Beacon has misinterpreted the application of the provisions of the Liberty policy and the case law it cites in support of its contention. Specifically, Beacon confuses the question of the injured employee's right to claim benefits in a particular state with the question whether the insurance policy terms cover an employee's claim filed in another jurisdiction.

We agree with the trial judge that there is concurrent jurisdiction over Mr. Furia's claim in Rhode Island and Massachusetts. Similar to Rhode Island, "[i]t is well established that Massachusetts will take jurisdiction if the employee was injured while working under a Massachusetts contract of hire or if the injury occurred within its borders." 29 Mass. Prac., Workers' Compensation, § 5.2 (3d ed.). By virtue of the fact that Mr. Furia was injured at a job site in Massachusetts, Massachusetts would have jurisdiction over his claim. Therefore, if Mr. Furia had elected to file his workers' compensation claim in Massachusetts, Liberty, pursuant to the terms of its policy, would have been responsible for the payment of his benefits under the Massachusetts Workers' Compensation Act.

There are almost identical provisions in both the Beacon and Liberty policies which address the payment of benefits awarded in another state. The Liberty policy incorporates the "Massachusetts Limited Other States Insurance Endorsement" which states in pertinent part:

1. We will pay promptly, when due, the benefits required of you by the workers' compensation law of any state other than Massachusetts, but only if the claim for such benefits involves work performed by a Massachusetts employee. (Emphasis added.)

Ajax obtained the insurance policy with Liberty through the "assigned risk pool" in Massachusetts, not through the voluntary market. The Massachusetts Workers' Compensation Rating and Inspection Bureau (WCRIB) administers the assigned risk pool in Massachusetts for

the Department of Industrial Accidents. The WCRIB, in a bulletin issued to insurers, defines a “Massachusetts employee” for purposes of assigned risk pool policies as follows:

Coverage for out-of-state benefits will be provided only to Massachusetts employees. “Massachusetts employees” here refers to individuals who are hired in Massachusetts to work primarily in Massachusetts, but who are temporarily working in another state in furtherance of their Massachusetts employers.

Resp. Liberty’s Ex. D. Although this language is not specifically included in the assigned risk pool policy issued by Liberty to Ajax, it does provide guidance as to the meaning of the language used in the policy, specifically the term “Massachusetts employee” utilized in the Massachusetts Limited Other States Insurance Endorsement noted above. Under the terms of its policy, Liberty is therefore obligated to pay benefits awarded in another state to an employee who was hired in Massachusetts by a Massachusetts employer and was injured while working temporarily in that other state. Obviously, under this definition, Mr. Furia is not considered to be a “Massachusetts employee” and therefore, Liberty is not liable for the payment of benefits awarded to him in a state other than Massachusetts.

Beacon cites the cases of Bagnol v. Springfield Sand & Tile Co., 144 F.2d 65 (1st Cir. 1944), and Lavoie’s Case, 334 Mass. 403, 135 N.E.2d 750 (1956), *cert. denied*, 352 U.S. 927 (1956), in support of its argument that an employee hired in another state can still be deemed a “Massachusetts employee” if he is injured in Massachusetts and therefore Liberty must be held responsible for Mr. Furia’s claim under the terms of its policy. Unfortunately, there is not a direct correlation between the facts of these cases and the circumstances of Mr. Furia’s claim. Both Bagnol and Lavoie’s Case involved employees who were hired in another state and sustained work-related injuries in Massachusetts. The cases involved whether the employees had the right to file for benefits in the jurisdiction of Massachusetts and receive benefits under the

Massachusetts law. Neither decision addressed any issues regarding which insurer would be responsible to pay those benefits, or whether the employee was a “Massachusetts employee” for purposes of an insurance policy. The fact that a court has determined that an employee can obtain benefits under the Massachusetts Workers’ Compensation Act does not equate to a conclusion that such an employee qualifies as a “Massachusetts employee” as that term is utilized in an insurance policy.

The decision in Lavoie’s Case does support our conclusion that there is concurrent jurisdiction over Mr. Furia’s claim. Lavoie was hired in Rhode Island by a Rhode Island employer and resided in Rhode Island. He primarily worked in Rhode Island, but while on a temporary work assignment in Massachusetts, he sustained a work-related injury. Lavoie was awarded workers’ compensation benefits in Rhode Island, but then elected to file a claim in Massachusetts. The Massachusetts court found that an employee who sustains a work-related injury in Massachusetts, while performing work under a contract of hire made in another state, can recover benefits under the Massachusetts act. Interestingly, Lavoie had acknowledged that the benefits he had received under the Rhode Island award should be credited to any sums he might be awarded under the Massachusetts act, but he stated that he pursued a claim in Massachusetts because in some respects the law was more favorable than the Rhode Island law. In the present matter, Mr. Furia had the option to file in Massachusetts or Rhode Island and, in consultation with his attorney, elected to file his claim in Rhode Island, presumably because the benefits and/or provisions of the law were more favorable.

Beacon also cites the Appellate Division decision in Flaxington v. Persona Management, W.C.C. No. 92-14565 (App. Div. 1995), in support of its contention that Liberty should be held solely responsible for Mr. Furia’s benefits because Liberty collected premium

based on his wages. After reviewing the Flaxington decision, we find that it does not assist Beacon in any way. The case involved an employee who was injured while working for a company who had an employee leasing arrangement with Persona for purposes of providing payroll and insurance services. An insurer, Wausau, had written a policy for Persona but had informed Persona that it was not providing coverage for the client company where Flaxington was working. The court ruled that Persona was a general employer under the terms of the Act and therefore was deemed to be the “employer” of Flaxington. The panel also affirmed the trial judge’s conclusion that Wausau, as the insurer of Persona, was liable for Flaxington’s claim. The trial judge had noted that pursuant to R.I.G.L. § 28-36-5, every insurance policy for workers’ compensation “shall cover the entire liability of the employer.” In addition, the trial judge pointed out that there was “an estoppel issue” because Wausau had billed and received payment from Persona for the deductible amount due on Flaxington’s claim.

The Flaxington case did not involve a coverage issue with two (2) insurers and there is no holding that an insurer which receives premium based upon a particular employee’s wages is estopped from denying coverage for that employee. Actually, one might argue that Flaxington supports our application of § 28-36-5 in the present matter to hold Beacon liable for Mr. Furia’s claim despite its assertion that its policy was not intended to cover such a risk.

In its memoranda Beacon has also alleged that Liberty breached its fiduciary duty to its insured and committed various violations of the law in its handling of Mr. Furia’s claim. The statute regarding the standards for investigating and disposing of insurance claims, R.I.G.L. § 27-9.1-1, *et seq.*, specifically states that “[i]t is not intended to cover claims involving workers’ compensation, fidelity, suretyship or boiler and machinery insurance” (emphasis added).

Furthermore, any arguments over a breach of fiduciary duty or bad faith are not relevant to our inquiry and may be the subject of actions in a forum other than this court.

Although we have not specifically addressed each reason of appeal filed by the parties one by one, we are confident that the above discussion addresses all of the issues raised in this appeal. In conclusion, we find that Beacon is solely responsible for the benefits due to Mr. Furia under the Rhode Island Workers' Compensation Act as awarded in W.C.C. No. 2004-07614. Consequently, we deny the appeals of Ajax and Beacon, and grant the appeal of Liberty. The decree entered by the trial judge is hereby vacated and a new decree shall enter containing the following findings of fact and orders:

1. That Mark Furia, an employee of the petitioner, Ajax Construction Company, sustained a work-related injury on October 26, 2004 and was awarded workers' compensation benefits under the Rhode Island Workers' Compensation Act in an unappealed pretrial order entered in W.C.C. No. 2004-07614.
2. That Mark Furia was hired by the employer, Ajax Construction Company, in Rhode Island and sustained his work-related injury while working on a job site in Massachusetts.
3. That the employer had a workers' compensation insurance policy with Beacon Mutual Insurance Company issued in Rhode Island and a workers' compensation insurance policy with Liberty Mutual Insurance Company issued in Massachusetts.
4. That according to the laws of Rhode Island and Massachusetts, there is concurrent jurisdiction over the claim of Mark Furia.
5. That in accordance with R.I.G.L. § 28-36-5, Beacon Mutual Insurance Company is responsible to cover the entire liability of Ajax Construction Company under the Rhode Island

Workers' Compensation Act arising out of the work-related injury sustained by Mark Furia on October 26, 2004 as documented in W.C.C. No. 2004-07614.

6. That Liberty Mutual Insurance Company is not responsible for the payment of any benefits awarded to Mark Furia by the Rhode Island Workers' Compensation Court for the work-related injury he sustained on October 26, 2004.

7. That Beacon Mutual Insurance Company has paid workers' compensation benefits to and on behalf of Mark Furia pursuant to an interlocutory order and the trial decree entered in this matter.

It is, therefore, ordered:

1. That the decree entered by the trial judge in this matter on May 19, 2006 is hereby vacated.

2. That Beacon Mutual Insurance Company shall pay workers' compensation benefits on behalf of its insured, Ajax Construction Company, to and on behalf of the employee, Mark Furia, regarding the work-related injury he sustained on October 26, 2004 as documented in the pretrial order entered in W.C.C. No. 2004-07614.

3. That Beacon Mutual Insurance Company shall take credit for all payments made to or on behalf of Mark Furia pursuant to the interlocutory order and the trial decree entered in this matter.

4. That Beacon Mutual Insurance Company shall reimburse Liberty Mutual Insurance Company for any workers' compensation benefits paid by Liberty Mutual to Beacon Mutual pursuant to the trial decree previously entered in this matter.

We have prepared and submit herewith a new decree consistent with our decision. In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, this final decree, a copy of which is enclosed, shall be entered on

Bertness and Salem, JJ. concur.

ENTER:

Olsson, J.

Bertness, J.

Salem, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

AJAX CONSTRUCTION COMPANY)

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VS.)

W.C.C. 2004-07659

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LIBERTY MUTUAL INSURANCE COMPANY)
AND THE BEACON MUTUAL INSURANCE)
COMPANY)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the claims of appeal of the petitioner, Ajax Construction Company, and the two (2) respondents, Liberty Mutual Insurance Company and The Beacon Mutual Insurance Company. Upon consideration thereof, the appeals of Ajax Construction Company and The Beacon Mutual Insurance Company are denied and dismissed, and the appeal of Liberty Mutual Insurance Company is granted. In accordance with the Decision of the Appellate Division, the following findings of fact are made:

1. That Mark Furia, an employee of the petitioner, Ajax Construction Company, sustained a work-related injury on October 26, 2004 and was awarded workers' compensation benefits under the Rhode Island Workers' Compensation Act in an unappealed pretrial order entered in W.C.C. No. 2004-07614.

2. That Mark Furia was hired by the employer, Ajax Construction Company, in Rhode Island and sustained his work-related injury while working on a job site in Massachusetts.

3. That the employer had a workers' compensation insurance policy with Beacon Mutual Insurance Company issued in Rhode Island and a workers' compensation insurance policy with Liberty Mutual Insurance Company issued in Massachusetts.

4. That according to the laws of Rhode Island and Massachusetts, there is concurrent jurisdiction over the claim of Mark Furia.

5. That in accordance with R.I.G.L. § 28-36-5, Beacon Mutual Insurance Company is responsible to cover the entire liability of Ajax Construction Company under the Rhode Island Workers' Compensation Act arising out of the work-related injury sustained by Mark Furia on October 26, 2004 as documented in W.C.C. No. 2004-07614.

6. That Liberty Mutual Insurance Company is not responsible for the payment of any benefits awarded to Mark Furia by the Rhode Island Workers' Compensation Court for the work-related injury he sustained on October 26, 2004.

7. That Beacon Mutual Insurance Company has paid workers' compensation benefits to and on behalf of Mark Furia pursuant to an interlocutory order and the trial decree entered in this matter.

It is, therefore, ORDERED:

1. That the decree entered by the trial judge in this matter on May 19, 2006 is hereby vacated.

2. That Beacon Mutual Insurance Company shall pay workers' compensation benefits on behalf of its insured, Ajax Construction Company, to and on behalf of the employee, Mark Furia, regarding the work-related injury he sustained on October 26, 2004 as documented in the pretrial order entered in W.C.C. No. 2004-07614.

3. That Beacon Mutual Insurance Company shall take credit for all payments made to or on behalf of Mark Furia pursuant to the interlocutory order and the trial decree entered in this matter.

4. That Beacon Mutual Insurance Company shall reimburse Liberty Mutual Insurance Company for any workers' compensation benefits paid by Liberty Mutual to Beacon Mutual pursuant to the trial decree previously entered in this matter.

Entered as the final decree of this Court this day of

BY ORDER:

John A. Sabatini, Administrator

ENTER:

Olsson, J.

Bertness, J.

Salem, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to James T. Hornstein, Esq., Jeffrey M. Liptrot, Esq., Conrad M. Cutcliffe, Esq., and Michael S. Kiernan, Esq., on