

CASE NO. 6538 CRB-8-24-4 : COMPENSATION REVIEW BOARD
CLAIM NOS. 601064722 & 601067132

ELIZABETH M. DODGE, : WORKERS' COMPENSATION
SURVIVING SPOUSE OF COMMISSION
STEPHEN M. DODGE, DECEASED
CLAIMANT-APPELLANT

v. : MAY 2, 2025

STATE OF CONNECTICUT/DEPARTMENT OF MOTOR VEHICLES
SELF-INSURED
EMPLOYER

and

GALLAGHER BASSETT SERVICES, INC.
THIRD-PARTY ADMINISTRATOR

and

TOWN OF MANCHESTER
EMPLOYER

and

TRAVELERS INDEMNITY COMPANY
INSURER

and

CONNECTICUT INTERLOCAL RISK MANAGEMENT AGENCY
THIRD-PARTY INSURER
RESPONDENTS-APPELLEES

APPEARANCES: The claimant was represented by Christopher Meisenkothen, Esq., Early, Lucarelli, Sweeney & Meisenkothen, L.L.C., One Century Tower, 265 Church Street, Suite 1101, New Haven, CT 06510.

Respondents State of Connecticut/Department of Motor Vehicles and Gallaher Bassett Services, Inc., were represented by Patrick G. Finley, Esq., Assistant Attorney General, Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106.

Respondents Town of Manchester and Travelers Indemnity Company were represented by Melissa A. Murello, Esq., Law Offices of Cynthia M. Garraty, P.O. Box 2903, Hartford, CT 06104.

Respondent Connecticut Interlocal Risk Management Agency did not appear at oral argument.

This Petition for Review from the April 1, 2024 Finding and Award of David W. Schoolcraft, Administrative Law Judge acting for the Eighth District, was heard on November 22, 2024 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Peter C. Mlynarczyk and Shanique D. Fenlator.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant has petitioned for review from the April 1, 2024 Finding and Award of David W. Schoolcraft, Administrative Law Judge acting for the Eighth District (decision). We find no error and accordingly affirm the decision.¹

At formal proceedings, the administrative law judge identified the following issues for resolution by agreement of the parties: (1) whether the decedent had suffered an occupational disease arising out of his employment with the State of Connecticut and/or the Town of Manchester pursuant to General Statutes § 31-275 (1)²; (2) determination of the decedent's average weekly wage and compensation rate pursuant

¹ We note that two extensions of time and one de facto continuance were granted during the pendency of this appeal.

² General Statutes § 31-275 (1) provides in relevant part: “‘Arising out of and in the course of his employment’ means an accidental injury happening to an employee or an occupational disease of an employee originating while the employee has been engaged in the line of the employee’s duty in the business or affairs of the employer upon the employer’s premises, or while engaged elsewhere upon the employer’s business or affairs by the direction, express or implied, of the employer”

to General Statutes § 31-310³; (3) whether, prior to his death, the decedent was eligible for total incapacity benefits pursuant to General Statutes § 31-307⁴; (4) whether the decedent's widow is entitled to payment of survivor's benefits pursuant to General Statutes § 31-306⁵; and (5) determination of the credit/moratorium for third-party recoveries pursuant to General Statutes § 31-293 (a).⁶

³ General Statutes § 31-310 (a) provides in relevant part: "For the purposes of this chapter, the average weekly wage shall be ascertained by dividing the total wages received by the injured employee from the employer in whose service the employee is injured during the fifty-two calendar weeks immediately preceding the week during which the employee was injured, by the number of calendar weeks during which, or any portion of which, the employee was actually employed by the employer"

⁴ General Statutes § 31-307 (a) provides in relevant part: "If any injury for which compensation is provided under the provisions of this chapter results in total incapacity to work, the injured employee shall be paid a weekly compensation equal to seventy-five per cent of the injured employee's average weekly earnings as of the date of the injury, calculated pursuant to section 31-310"

⁵ General Statutes § 31-306 (a) provides in relevant part: "Compensation shall be paid to dependents on account of death resulting from an accident arising out of and in the course of employment or from an occupational disease as follows: (1) Four thousand dollars shall be paid for burial expenses in any case in which the employee died on or after October 1, 1988, and before June 23, 2021, and twelve thousand dollars shall be paid for burial expenses in any case in which the employee died on or after June 23, 2021 (2) To those wholly dependent upon the deceased employee at the date of the deceased employee's injury, a weekly compensation equal to seventy-five per cent of the average weekly earnings of the deceased calculated pursuant to section 31-310 ... as of the date of the injury but not more than the maximum weekly compensation rate set forth in section 31-309 for the year in which the injury occurred or less than twenty dollars weekly.... (3) If the surviving spouse is the sole presumptive dependent, compensation shall be paid until death or remarriage...."

⁶ General Statutes § 31-293 (a) provides in relevant part: "When any injury for which compensation is payable under the provisions of this chapter has been sustained under circumstances creating in a person other than an employer who has complied with the requirements of subsection (b) of section 31-284, a legal liability to pay damages for the injury, the injured employee may claim compensation under the provisions of this chapter, but the payment or award of compensation shall not affect the claim or right of action of the injured employee against such person, but the injured employee may proceed at law against such person to recover damages for the injury; and any employer or the custodian of the Second Injury Fund, having paid, or having become obligated to pay, compensation under the provisions of this chapter may bring an action against such person to recover any amount that he has paid or has become obligated to pay as compensation to the injured employee. If the employee, the employer or the custodian of the Second Injury Fund brings an action against such person, he shall immediately notify the others, in writing, by personal presentation or by registered or certified mail, of the action and of the name of the court to which the writ is returnable, and the others may join as parties plaintiff in the action within thirty days after such notification, and, if the others fail to join as parties plaintiff, their right of action against such person shall abate unless the employer, insurance carrier or Second Injury Fund gives written notice of a lien in accordance with this subsection. In any case in which an employee brings an action against a party other than an employer who failed to comply with the requirements of subsection (b) of section 31-284, in accordance with the provisions of this section, and the employer is a party defendant in the action, the employer may join as a party plaintiff in the action. The bringing of any action against an employer shall not constitute notice to the employer within the meaning of this section. If the employer and the employee join as parties plaintiff in the action and any damages are recovered, the damages shall be so apportioned that the claim of the employer, as defined in this section, shall take precedence over that of the injured employee in the proceeds of the recovery, after the deduction of reasonable and necessary expenditures, including attorneys' fees,

The administrative law judge made the following factual findings which are pertinent to our review. The decedent married the claimant on May 20, 1972; they were still married on June 22, 2011 (the date of the decedent's diagnosis with mesothelioma) and remained married for the duration of the decedent's life. During the summer of 1967, the decedent was employed by the Town of Manchester as a school custodian at an elementary school. His job duties included sweeping, buffing and polishing vinyl floors containing asbestos; he also testified regarding his exposure "to significant concentrations of airborne asbestos fibers" while sweeping dust generated by repairs to the school's boiler. Findings, ¶ 14, *citing* Claimant's Exhibit H, pp. 78-81.

incurred by the employee in effecting the recovery. If the action has been brought by the employee, the claim of the employer shall be reduced by one-third of the amount of the benefits to be reimbursed to the employer, unless otherwise agreed upon by the parties, which reduction shall inure solely to the benefit of the employee, except that such reduction shall not apply if the reimbursement is to the state of Connecticut or a political subdivision of the state including a local public agency, as the employer, or the custodian of the Second Injury Fund. The rendition of a judgment in favor of the employee or the employer against the party shall not terminate the employer's obligation to make further compensation which the administrative law judge thereafter deems payable to the injured employee. If the damages, after deducting the employee's expenses as provided in this subsection, are more than sufficient to reimburse the employer, damages shall be assessed in his favor in a sum sufficient to reimburse him for his claim, and the excess shall be assessed in favor of the injured employee. No compromise with the person by either the employer or the employee shall be binding upon or affect the rights of the other, unless assented to by him. For the purposes of this section, the claim of the employer shall consist of (1) the amount of any compensation which he has paid on account of the injury which is the subject of the suit, and (2) an amount equal to the present worth of any probable future payments which he has by award become obligated to pay on account of the injury.... Each employee who brings an action against a party in accordance with the provisions of this subsection shall include in his complaint (A) the amount of any compensation paid by the employer or the Second Injury Fund on account of the injury which is the subject of the suit, and (B) the amount equal to the present worth of any probable future payments which the employer or the Second Injury Fund has, by award, become obligated to pay on account of the injury. Notwithstanding the provisions of this subsection, when any injury for which compensation is payable under the provisions of this chapter has been sustained under circumstances creating in a person other than an employer who has complied with the requirements of subsection (b) of section 31-284, a legal liability to pay damages for the injury and the injured employee has received compensation for the injury from such employer, its workers' compensation insurance carrier or the Second Injury Fund pursuant to the provisions of this chapter, the employer, insurance carrier or Second Injury Fund shall have a lien upon any judgment received by the employee against the party or any settlement received by the employee from the party, provided the employer, insurance carrier or Second Injury Fund shall give written notice of the lien to the party prior to such judgment or settlement."

From December 1972, until his retirement at some point in 2003, the decedent was employed by the State of Connecticut Department of Motor Vehicles (DMV) as an analyst. He was exposed to airborne asbestos fibers at the Wethersfield facility during periods of construction, renovation and repairs to the building over the course of his employment.⁷ After retiring from the DMV, he worked for several other employers; none of these positions were suspected of exposing him to asbestos. In February 2010, he retired from the workforce altogether.

In May 2011, the decedent sought medical treatment for abdominal pain and bloating. Imaging studies ordered by his primary care physician revealed a mass, which was biopsied on June 22, 2011, and determined to be malignant. He was subsequently diagnosed with mesothelioma and referred to an oncologist. Although surgery was attempted on July 29, 2011, the procedure was aborted when it was discovered that the cancer had “spread extensively around various organs.” Findings, ¶ 36.

The decedent died on February 27, 2012. His death certificate reported the cause of death as “cardiopulmonary arrest, due to ‘mesothelioma of peritoneum.’” Claimant’s Exhibit C. On April 5, 2012, the claimant was appointed the executor of the decedent’s estate; on July 25, 2012, the claimant, through counsel, filed forms 30D against the Town of Manchester and the State of Connecticut.⁸ See Administrative Notice Exhibits 5, 6.

The decedent and claimant filed claims against several asbestos bankruptcy trusts as well as a product liability suit against various manufacturers of asbestos-containing

⁷ The evidentiary record indicated that although the state commenced remediation of the Wethersfield DMV facility in 1997, an environmental testing company hired in 2004 determined that samples taken from the floor tiles and tile mastic still contained asbestos, resulting in another significant remediation project.

⁸ The form 30D is entitled “Dependent’s Notice of Claim.”

products.⁹ At trial, the claimant introduced into the record a list of the third-party recoveries realized by the decedent and claimant as a result of these lawsuits and claims. See Claimant's Exhibit S. Although the exhibit did not identify the names of the seventeen individual tortfeasors who had entered into settlements, the document did categorize the various exposures as occupational and nonoccupational and also indicated whether the exposures were due to the decedent's father's employment at Pratt & Whitney, pertained to the furnace repairs at the decedent's childhood home, or had been received from defendants whose building products were used in the decedent's homes.

The decedent and claimant realized a gross recovery of \$522,424.30 from third-party tortfeasors. The parties stipulated that \$31,500 of the gross recovery was paid by manufacturers of products associated with the decedent's occupational exposures, while the remaining balance was paid by manufacturers of products associated with the decedent's nonoccupational exposures. The net recovery from the third-party actions, after deductions for attorney's fees and expenses, was \$337,048.71; the parties further stipulated that 30 percent (\$101,114.61) was paid to the claimant for her loss-of-consortium claim and 70 percent (\$235,934.10) was paid to the decedent and/or his estate for personal damages.

At trial, the claimant argued that the decedent had been entitled to temporary total incapacity benefits pursuant to § 31-307 from the date of his diagnosis on June 22, 2011, until his death on February 27, 2012, and that she was entitled to survivor's benefits as the decedent's presumptive dependent. The claimant also contended "that the respondents are entitled to a credit for only a small portion of the third-party recoveries

⁹ The product liability suit was filed on August 1, 2011, and assigned the docket number FBT-CV-6020931S.

she and her husband received because most of those recoveries were for asbestos exposure that did not occur at work, and that she is also entitled to a one-third reduction in the lien/moratorium.” Findings, ¶ 51. The respondents argued that the evidence of harmful occupational exposure was insufficient to prove causation and, as such, the decedent’s disease should be attributed to his nonoccupational asbestos exposures. In the event of a finding of compensability, they also contested the decedent’s entitlement to temporary total incapacity benefits prior to his death and “claimed they are entitled to a moratorium for *all* net recoveries [the decedent] received from third-party tortfeasors” (Emphasis in the original.) Findings, ¶ 52. The respondents also contended that the statutory reduction of one-third pursuant to § 31-293 (a) is not applicable to the present matter and that any settlement funds paid to the claimant for her loss of consortium claim should be included in the moratorium.

On the basis of the foregoing, the administrative law judge concluded that the decedent’s mesothelioma resulted from exposure to airborne asbestos fibers and his employment with both the Town of Manchester and the State of Connecticut constituted substantial contributing factors to the development of mesothelioma.¹⁰ The trier also

¹⁰ The evidentiary record contained medical reports from several experts. On August 8, 2012, Jerrold L. Abraham, a pathologist, issued a report confirming the diagnosis of malignant mesothelioma caused by asbestos exposure. See Claimant’s Exhibit F. On June 2, 2014, Kevin W. Miller, Ph.D., an environmental toxicologist, issued a report opining that the decedent “was not exposed to harmful concentrations of asbestos fibers” during his employment with the DMV but that he likely had experienced harmful exposure at his own home and while employed by the Town of Manchester. Findings, ¶ 47. Miller further opined that the decedent also experienced second-hand exposure from the use of his father’s car as a teenager. See Respondents’ Exhibit 1. On July 28, 2016, Daniel A. Gerardi, a pulmonologist, issued a report following a records review; he confirmed that the decedent’s mesothelioma was caused by exposure to asbestos but opined that “it was unlikely” that the decedent’s employment at the DMV was implicated in the development of the mesothelioma. Findings, ¶ 48; see also Respondents’ Exhibit 3. On September 16, 2022, L. Christine Oliver, an occupational medicine specialist, issued a report opining that the decedent’s employment at the DMV was a substantial contributing factor to his mesothelioma and his employment as a custodian for the Town of Manchester was “an additional contributing factor”; however, she was unable to conclude that the decedent’s non-occupational exposure was “a significant contributing factor.” Findings, ¶ 50, *quoting* Claimant’s Exhibit G, p. 13.

found that the decedent’s nonoccupational exposure to asbestos was a “significant factor in causing his mesothelioma.” Conclusion, ¶ J.

The administrative law judge determined that the date of first manifestation of the decedent’s occupational disease was the date of diagnosis on June 22, 2011, and found that although the decedent was clearly totally incapacitated as of the date of his surgery on July 29, 2011, his “symptoms [as of June 22, 2011] were such that he was likely already incapacitated from any gainful employment he might reasonably pursue. This total incapacity was permanent.” Conclusion, ¶ M. The trier concluded that if the decedent were eligible for temporary total incapacity benefits, he would be entitled to 14.28571 weeks of benefits for the period of June 23, 2011, through September 30, 2011, in the amount of \$16,200 and to 21.28571 weeks for the period between October 1, 2011, and February 27, 2012, in the amount of \$24,861.71. However, in light of our Appellate Court’s holding in Cochran v. Dept. of Transportation, 220 Conn. App. 855 (2023), *rev’d*, 350 Conn. 844 (2024), the trier concluded that the decedent was ineligible for temporary total incapacity benefits given that “he had been fully retired from the workforce for a number of years” by the time he became totally incapacitated.¹¹ Conclusion, ¶ O.

¹¹ In Cochran v. Dept. of Transportation, 220 Conn. App. 855 (2023), *rev’d*, 350 Conn. 844 (2024), our Appellate Court reviewed an appeal brought by respondents challenging an order to pay temporary total incapacity benefits to a claimant who retired approximately nine years after sustaining a compensable injury to his back and then sought benefits for indemnity and additional medical treatment, including surgery, twelve years later. The court held “that the plain and unambiguous language of [General Statutes] § 31-307 (a) does not entitle the plaintiff to temporary total disability benefits where he elected to take an incentivized early retirement benefits package and never intended to reenter the workforce because it cannot be said that his injury *resulted* in his total incapacity to work.” (Emphasis in the original.) *Id.*, 869. On December 24, 2024, subsequent to the issuance of the finding in the present matter, our Supreme Court reversed the decision of the Appellate Court, holding “that, under the plain and unambiguous language of § 31-307 (a), a worker who has sustained a compensable workplace injury under the act is eligible to receive total incapacity benefits when the total incapacity occurs after their voluntary retirement from the workforce. The text of the statute does not contain any exclusions for a worker whose incapacity occurs

The administrative law judge also determined that the claimant was entitled to the \$4,000 funeral allowance pursuant to § 31-306 (a) (1) and weekly survivor's benefits pursuant to § 31-306 (a) (2) for the period of February 28, 2012, through March 31, 2024, in the amount of \$822,192.29. However, in view of the settlement funds previously paid to the decedent and/or his estate in association with the third-party lawsuits and claims against manufacturers of asbestos-containing products, the survivor's benefits payable to the claimant were subject to a moratorium in the amount of \$235,934.10.¹² The trier determined that this moratorium was exhausted on December 6, 2015, and, as such, the claimant became eligible to begin collecting survivor's benefits on December 7, 2015, resulting in a payment due as of March 31, 2024, in the amount of \$590,395.60. In addition to the foregoing, the trier ordered the respondents to commence ongoing payments of survivor's benefits to the claimant on April 1, 2024, "continuing until such time as she ceases to be eligible for such benefits, or until such time as a form 36 is approved." Order, ¶ V.

On appeal, the claimant has asserted two claims of error. The claimant contends that the administrative law judge erroneously relied on our Appellate Court's decision in Cochran in concluding that the decedent was not entitled to temporary total incapacity benefits because he had voluntarily retired before being diagnosed with mesothelioma.¹³

after retirement, and no such limitation is fairly implied by its context or other relevant components of the act." Cochran v. Dept. of Transportation, 350 Conn. 844, 865 (2024).

¹² The administrative law judge did not include the third-party recoveries allocated to the claimant's loss-of-consortium claim in the respondents' moratorium.

¹³ The claimant also relies in part on Martinoli v. Stamford Police Dept., 350 Conn. 868 (2024), a companion case to Cochran v. Dept. of Transportation, 350 Conn. 844 (2024), wherein our Supreme Court reviewed an appeal brought by the respondent municipality challenging the award of temporary total incapacity benefits to a firefighter who sustained a compensable cardiac injury pursuant to General Statutes § 7-433c and sought workers' compensation benefits sixteen years after his voluntary retirement. As was the case in Cochran, the Supreme Court reversed the decision of the Appellate Court denying the benefits. For purposes of simplicity, we will refer only to Cochran in this analysis.

The claimant also argues that the trier’s decision to include the third-party settlement funds associated with the decedent’s nonoccupational exposures to asbestos in the respondents’ moratorium constituted error.¹⁴

The standard of appellate review we are obliged to apply to a trier’s findings and legal conclusions is well-settled. “[F]actual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences.” Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing Fair v. People’s Savings Bank*, 207 Conn. 535, 539 (1988). Moreover, “[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did.” Burton v. Mottolese, 267 Conn. 1, 54 (2003), *quoting Thalheim v. Greenwich*, 256 Conn. 628, 656 (2001). Thus, “it is ... immaterial that the facts permit the drawing of diverse inferences. The [trier] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court.” Fair, *supra*, 540, *quoting Del Vecchio v. Bowers*, 296 U.S. 280, 287 (1935).

We begin our analysis with the claimant’s first claim of error relative to the decedent’s eligibility for total incapacity benefits pursuant to § 31-307 (a). As noted previously, our Supreme Court released its decision in Cochran approximately eight months after the decision in the present matter was issued, reversing the decision of our

¹⁴ Neither of the respondent employers in this matter appealed any elements of the decision. On July 3, 2024, respondents Town of Manchester and Travelers Indemnity Company filed a “Statement to Join Appellee Brief of the State of Connecticut” indicating its agreement with the administrative law judge’s decision to dismiss the claim for post-retirement temporary total incapacity benefits and to include the third-party settlements associated with the decedent’s nonoccupational exposures to asbestos in the respondents’ moratorium.

Appellate Court and holding that voluntary retirement from the workforce does not, in and of itself, obviate an injured worker's eligibility for temporary total incapacity benefits. Thus, while we believe the trier properly denied these benefits in accordance with the law in effect at the time he issued his decision, it may be reasonably inferred that the decedent's retirement status no longer poses an impediment to his estate's entitlement to temporary total incapacity benefits for the period between the date of his mesothelioma diagnosis on June 22, 2011, and his death on February 27, 2012. In light of the unchallenged factual findings on this issue, we affirm the trier's calculations regarding the post-retirement temporary total incapacity benefits due to the decedent's estate.¹⁵

However, we note that the claimant also contends that the administrative law judge's reliance upon Cochran constituted error because that decision is inapplicable to occupational disease claims. This argument has no merit; while we recognize that an acute lumbar spine injury, rather than an occupational disease, was the basis for the litigation in Cochran, at no point in its analysis did the Cochran court carve out an exception to its decision for occupational disease claims.

The claimant further asserts that eligibility for temporary total incapacity benefits for retired workers who subsequently develop an occupational disease is governed by the provisions of General Statutes § 31-310c¹⁶ rather than § 31-307. We disagree; § 31-310c,

¹⁵ A stipulated award for the payment of temporary total incapacity benefits was executed by the parties and approved by the administrative law judge on March 28, 2025.

¹⁶ General Statutes § 31-310c provides: "For the purposes of this chapter, in the case of an occupational disease the average weekly wage shall be calculated as of the date of total or partial incapacity to work. However, in the case of an occupational disease which manifests itself at a time when the worker has not worked during the twenty-six weeks immediately preceding the diagnosis of such disease, the claimant's average weekly wage shall be considered to be equivalent to the greater of (1) the average weekly wage determined pursuant to section 31-310 and adjusted pursuant to section 31-307a or (2) the average weekly wage earned by the claimant during the fifty-two calendar weeks last worked by the claimant, which wage shall be determined in accordance with said section 31-310 and adjusted pursuant to said section 31-307a."

which is entitled “average weekly wage of worker with an occupational disease,” simply provides a method for calculating the average weekly wage “in the case of an occupational disease which manifests itself at a time when the worker has not worked during the twenty-six weeks immediately preceding the diagnosis of such disease” The plain language of the statute does not implicate issues of causation or eligibility for workers’ compensation benefits.

For similar reasons, we reject the claimant’s contention that the trier should have disregarded Cochran because our “Supreme Court has already spoken on this issue as it pertains to occupational disease claims in Green v. General Dynamics Corp., 245 Conn. 66 (1998).” Appellant’s Brief, p. 10. In Green, the respondents challenged the award of survivor’s benefits on the basis that the decedent, who became incapacitated from mesothelioma approximately ten years after his retirement, “had no weekly wages, at ‘the time of injury,’ upon which to base a calculation of benefits.” Green v. General Dynamics Corp., supra, 245 Conn. at 70. Although the court identified entitlement to survivor’s benefits as the issue on appeal, its analysis focused on the interplay between § 31-310 and § 31-310c in calculating the decedent’s average weekly wage. Ultimately, the court held:

Since § 31–310 provided the method of calculation of average weekly wages “[f]or the purposes of” the act, the provisions of § 31–310c apply to the claimant’s application for dependent’s death benefits. We conclude that the employee’s complete retirement under the circumstances, at the time of his incapacity, does not bar weekly death benefits for a permanent loss of earning capacity. This is in keeping with the purpose of our act.

Id., 79.

In the present matter, the invocation of § 31-310c to calculate the decedent's average weekly wage would have been entirely proper had the parties not stipulated to the decedent's compensation rate at trial. However, in light of the parameters of the court's analysis in Green, we are not persuaded by the claimant's contention that the administrative law judge was free to disregard Cochran because Green was dispositive on the issue of the decedent's entitlement to post-retirement temporary total incapacity benefits.¹⁷

In her second claim of error, the claimant contends that the administrative law judge "erred when he concluded that the respondents were entitled to a credit based on nonoccupationally-related third-party settlements." Appellant's Brief, p. 13. As previously noted, the claimant and the decedent in the present matter were the recipients of funds associated with the settlement of a product liability lawsuit and various claims against manufacturers of asbestos-containing products. It is the claimant's position that although the respondents are entitled to the moratorium contemplated by the provisions of § 31-293 (a) for third-party settlements associated with the decedent's occupational exposures, the moratorium should not include any proceeds from settlements associated with the decedent's nonoccupational exposures to asbestos.

The claimant acknowledges that "[c]ase law on this issue is sparse," *id.*, but contends that in the present matter, "there is no dispute as to which third-party

¹⁷ In light of our Supreme Court's release of Cochran v. Dept. of Transportation, 350 Conn. 844 (2024), subsequent to the issuance of the finding but prior to this board's release of our Opinion in the present matter, we decline to address the claimant's contention that the administrative law judge should not have followed Cochran v. Dept. of Transportation, 220 Conn. App. 855 (2023), *rev'd*, 350 Conn. 844 (2024), because that decision was "stayed pursuant to Practice Book § 84-3 pending [its] ongoing appeal at the Connecticut Supreme Court." Appellant's Brief, p. 4.

settlements arose from occupational exposures and which from nonoccupational exposures because the parties stipulated to the precise breakdown”¹⁸ Id.; see also Claimant’s Exhibit S. As such, it is the claimant’s position that the pertinent exhibit along with the stipulation of the parties “allowed the [administrative law judge] to render a decision on the merits of the legal question.”¹⁹ Id.

In support of this argument, the claimant points out that the provisions of the Workers’ Compensation Act are specifically restricted to injuries arising from occupational incidents for which an employer/employee relationship exists. The claimant therefore asserts that eliminating from the moratorium the settlement funds associated with the decedent’s nonoccupational exposures to asbestos would not constitute a double recovery given that the nonoccupational exposures were outside the scope of employment. Moreover, the claimant points out that subtracting these funds from the moratorium would not result in a windfall to the claimant given that not all nonoccupational exposures are fully recoverable and “third-party settlements are almost always compromised numbers themselves, hardly reflecting the full value for a life lost to malignant mesothelioma.” Id., 17. Finally, the claimant asserts that eliminating these

¹⁸ In making this assertion, the claimant is distinguishing the evidentiary record in the present matter from that relied upon in the September 7, 2021 Finding and Award/Memorandum issued in Swain v. Electric Boat, wherein the trier “declined to address the merits of that claimant’s argument because the claimant had not properly established an evidentiary record segregating occupational settlements from nonoccupational settlements.” Appellant’s Brief, p. 13.

¹⁹ On appeal, the respondents have challenged the claimant’s reliance on Claimant’s Exhibit S, contending “that the descriptive title assigned to each settlement is immaterial. Exhibit ‘S’ still does not identify who the tortfeasor is, which product was made by each tortfeasor, and does not explain what criteria was used to reach [each] figure.” Appellees’ Brief, p. 5. Our review of the record indicates that when Claimant’s Exhibit S was introduced at formal proceedings held on August 24, 2023, claimant’s counsel stated that it “properly identifies each settlement that the claimants have received as being either occupationally or non-occupationally related.” August 24, 2023 Transcript, p. 9. Noting that claimant’s counsel had “stated that the parties have stipulated that I can rely on this,” id., 10, the administrative law judge queried the parties as to whether they wished to offer an objection or a clarification. Neither of the attorneys for the respondents objected to the submission of the exhibit into the record.

settlement funds from the respondents’ moratorium is fully consistent with the “humanitarian and remedial purposes of the act”²⁰ (Internal quotation marks omitted.) Blakeslee v. Platt Bros. & Co., 279 Conn. 239, 245 (2006), *quoting* Gartrell v. Dept. of Correction, 259 Conn. 29, 41–42 (2002). We do not find these arguments persuasive.

We note at the outset that our higher courts “have repeatedly observed that our [Workers’ Compensation Act, § 31–293 in particular] represents a complex and comprehensive statutory scheme balancing the rights and claims of the employer and the employee arising out of work-related personal injuries.” Soracco v. Williams Scotsman, Inc., 292 Conn. 86, 95 (2009), *quoting* Durniak v. August Winter & Sons, Inc., 222 Conn. 775, 781 (1992). Thus, while it is axiomatic that “[t]he humanitarian and remedial purposes of the act counsel against an overly narrow construction that unduly limits eligibility for workers’ compensation,” Deschenes v. Transco, Inc., 288 Conn. 303, 314 (2008), *quoting* Pizzuto v. Commissioner of Mental Retardation, 283 Conn. 257, 265 (2007), the provisions of § 31-293 (a) specifically provide that “*any damages*” recovered in a third-party action “shall be so apportioned that the claim of the employer ... shall take precedence over that of the injured employee in the proceeds of the recovery” (Emphasis added.)

²⁰ The claimant also challenges several “inappropriate policy-based reasons [advanced by the administrative law judge] for why the claimant’s interpretation of the law ‘could impede resolution and increase litigation.’” Appellant’s Brief, p. 21, *quoting* April 1, 2024 Memorandum, p. 12. We decline to enter into an examination of these arguments as we believe these issues are beyond the purview of this board in light of the “clear prohibition against public policy formulation articulated by our higher courts.” Saquipay v. All Seasons Landscaping of Ridgefield, L.L.C., 6332 CRB-7-19-5 (January 31, 2020). With specific regard to the claimant’s challenge to the trier’s “*dicta* about the ‘[q]uantum of proof in asbestos claims,’” (emphasis in the original) Appellant’s Brief, p. 24, *quoting* April 1, 2024 Memorandum, p. 13, we would simply point out that the administrative law judge correctly acknowledged that “[i]t is axiomatic that a claimant bears the burden of proving past exposure to dangerous levels of airborne asbestos in the workplace.” *Id.*

Moreover, in Cruz v. Montanez, 294 Conn. 357 (2009), our Supreme Court reviewed an appeal brought by a claimant who sustained injuries in a motor vehicle accident and subsequently sought to exclude an award of non-economic damages from the respondent employer’s moratorium.²¹ The court, in affirming the decision of the trial judge denying the exclusion, stated that “[i]t is evident ... that, for the purposes of § 31-293 (a), the term ‘any damages’ means damages of whatever kind or sort, without limitation.” *Id.*, 369. As such, the court “[rejected the] claim because it is contrary to the unambiguous directive of § 31-293 (a) that the employer shall be reimbursed from ‘any damages’ obtained by the employee against the third-party tortfeasor.” *Id.* Consistent with the plain language of § 31-293 (a) and our Supreme Court’s analysis in Cruz, we believe the legislature’s deliberate use of the words “any damages” precludes the omission from the respondents’ moratorium of the third-party recoveries associated with the decedent’s nonoccupational asbestos exposures.

Our Supreme Court has also stated that “[o]ne of the purposes of the workers’ compensation statute is ‘the avoidance of two independent compensations for the injury,’” Enquist v. General Datacom, 218 Conn. 19, 26 (1991), *quoting* Uva v. Alonzy, 116 Conn. 91, 98 (1933), and, as such, our higher courts have recognized “the principle that we should construe the act, whenever possible, to avoid a double recovery for the employee....” Callaghan v. Car Parts International, L.L.C., 329 Conn. 564, 574 (2018). As the administrative law judge correctly points out, “[r]equiring a respondent to pay the full measure of damages under the [Workers’ Compensation Act] while the clamant

²¹ In Cruz v. Montanez, 294 Conn. 357 (2009), the court noted that the claimant “could have sought economic damages against [the defendants] but, for whatever reason, elected not to do so.” *Id.*, 371.

simultaneously recovers money from someone else for the very same damages is the very definition of a double recovery.” (Footnote omitted.) April 1, 2024 Memorandum, p. 11.

The claimant also argues that although the decedent “suffered from a single disease – mesothelioma,” (emphasis in the original) Appellant’s Brief, p. 18, he sustained “multiple injuries, as the law understands that term in the context of long-latent occupational disease.” (Emphasis in the original.) Id. The claimant contends that “Connecticut has adopted the ‘continuous trigger’ theory in asbestos insurance cases,” id., 19, by which “inhalation exposure, exposure in residence, and manifestation all trigger coverage under the policies.” Security Ins. Co. of Hartford v. Lumbermens Mutual Casualty Co., 264 Conn. 688, 703 (2003) *quoting* Keene Corp. v. Ins. Co. of North America, 667 F.2d 1034, 1047 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 1007, 102 S. Ct. 1644 (1982). As such, the claimant avers that “it is proper to use ‘injury’ in multiple ways.” Appellant’s Brief, p. 20.

In Security, our Supreme Court reviewed an appeal concerning “a dispute over the proper allocation of defense costs in cases involving long latency loss claims that implicate multiple insurance policies.” Security Ins. Co. of Hartford v. Lumbermens Mutual Casualty Co., *supra*, 264 Conn. at 690. In so doing, the court examined the relative merits of pro rata allocation, by which a defendant is liable for its losses occurring during periods when it was uninsured, versus joint and several allocation, by which all costs are shared among the insurers.

In adopting the theory of pro rata allocation, the court stated that, pursuant to the “multiple, continuous, or successive trigger” approach, “inhalation exposure, exposure in residence, and manifestation all trigger coverage under the policies.” Id., 703, *quoting*

Keene Corp. v. Ins. Co. of North America, supra, 667 F.2d at 1047. Thus, “an occurrence has happened whenever the claimant was exposed to the cause of the injury, was injured in fact, or the injury became manifest. Consequently, any of these events trigger the applicable insurance policy in force at the time of the event.”²² *Id.*, 697 n. 12, quoting J. Stempel, *Law of Insurance Contract Disputes* (2d Ed. 1999 & Sup. 2002) § 14.09 [b], pp. 14-42 through 14-44.

In view of the court’s analysis in Security, it is the claimant’s contention that:

In the context of the present claim, the [decedent] had sustained “injuries” from his various historical exposures, but those exposures resulted in a single manifestation – mesothelioma – which is the compensable “injury” (occupational disease) under the act. This understanding is already implicit, if not fully explicit, in the act when it speaks in the context of “occupational diseases” rather than “occupational injuries” and when the filing period is triggered by the “first manifestation” rather than the “first exposure” or “first injury.”

Id., quoting General Statutes § 31-294c (a).²³

²² In Security Ins. Co. of Hartford v. Lumbermens Mutual Casualty Co., 264 Conn. 688 (2003), our Supreme Court did not specifically adopt the continuous trigger theory but, rather, discussed its role in relevant precedent from courts of other jurisdictions. The Security court did note that at proceedings below, the trial judge had concluded “that the Bridgeport asbestos litigation involved a continuous trigger situation such that all asbestos-related injury policies issued during the extended exposure period have been triggered for coverage and all companies that issued such policies are responsible for defense costs related to the Bridgeport asbestos litigation.” (Internal quotation marks omitted.) *Id.*, 696-97. Fourteen years later, in R.T. Vanderbilt Co. v. Hartford Accident & Indemnity Co., 171 Conn. App. 61 (2017), *aff’d*, 333 Conn. 343 (2019), our Appellate Court held: “We agree that our Supreme Court has not yet adopted continuous trigger as the law of Connecticut but, for the reasons discussed hereinafter, we adopt that theory of coverage as a matter of law for all asbestos-related disease claims.” *Id.*, 97.

²³ General Statutes § 31-294c (a) provides in relevant part: “No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational disease, as the case may be, which caused the personal injury, provided, if death has resulted within two years from the date of the accident or first manifestation of a symptom of the occupational disease, a dependent or dependents, or the legal representative of the deceased employee, may make claim for compensation within the two-year period or within one year from the date of death, whichever is later.... As used in this section, ‘manifestation of a symptom’ means manifestation to an employee claiming compensation, or to some other person standing in such relation to him that the knowledge of the person would be imputed to him, in a manner that is or should be recognized by him as symptomatic of the occupational disease for which compensation is claimed.”

We are not persuaded. Section 31-275 (1) specifically states that “[a]rising out of and in the course of his employment’ means an accidental injury happening to an employee or *an occupational disease* of an employee....” (Emphasis added.) In addition, § 31-275 (15) defines occupational disease as “*any disease* peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such, and includes *any disease* due to or attributable to exposure to or contact with any radioactive material by an employee in the course of his employment.” (Emphasis added.) Finally, § 31-275 (16) (A) states that “[p]ersonal injury’ or ‘injury’ includes, in addition to accidental injury that may be definitely located as to the time when and the place where the accident occurred, an injury to an employee that is causally connected with the employee’s employment and is the direct result of repetitive trauma or repetitive acts incident to such employment, and *occupational disease*.” (Emphasis added.)

In light of the foregoing statutory definitions of “injury,” we find little merit in the claimant’s argument that repetitive harmful exposures to a toxic substance ultimately resulting in occupational disease would constitute individual injuries in and of themselves. Moreover, as the administrative law judge accurately pointed out, “[a]n injury for which compensation is paid may be the result of a work accident, but it is the *injury* for which compensation is owed, not the accident.” (Emphasis in the original.) April 1, 2024 Memorandum, p. 15. Thus, while we agree with the trier that the instant claimant’s arguments regarding the relevance of the continuous trigger theory do possess a certain degree of “superficial appeal,” we are not persuaded that a rationale

undergirding liability allocation among insurers is pertinent to a claim for workers' compensation benefits. April 1, 2024 Memorandum, p. 15.

The claimant also points out that our case law contains examples of specific instances in which the proceeds from certain third-party recoveries have been excluded from a respondent employer's moratorium. For instance, in Schiano v. Bliss Exterminating, 13 Conn. Workers' Comp. Rev. Op. 45, 1341 CRD-4-91-11, 1852 CRB-4-93-9 (December 7, 1994), *aff'd*, 57 Conn. App. 406 (2000), this board held that a respondent's "entitlement to a credit for amounts recovered from a third party does not extend to a settlement received by a claimant's spouse for damages resulting from her loss of consortium."²⁴ *Id.*, 48. In Lesco v. Glass Crafters, 3915 CRB-3-98-10 (January 19, 2000), we explained that:

a claim for loss of consortium compensates a spouse for 'intangible' components including the "constellation of companionship, dependence, reliance, affection, sharing and aid which are legally recognizable, protected rights arising out of the civil contract of marriage." These intangible components are not compensated for under the Workers' Compensation Act. Accordingly, allowing a spouse to recover for such intangible factors without offsetting workers' compensation benefits does not lead to a double recovery.²⁵

Id., quoting Shegog v. Zabrecky, 36 Conn. App. 737, 751, *cert. denied*, 232 Conn. 922 (1995).

In addition, in Dodd v. Middlesex Mutual Assurance Co., 242 Conn. 375 (1997), our Supreme Court held that "any amounts an employee may receive from his or her

²⁴ On October 1, 1989, our legislature enacted General Statutes § 52-555a which provides: "Any claim or cause of action for loss of consortium by one spouse with respect to the death of the other spouse shall be separate from and independent of all claims or causes of action for the determination of damages with respect to such death."

²⁵ In addition to its decision in Cruz v. Montanez, 294 Conn. 357 (2009), our Supreme Court has also held that "if an employee recovers damages for pain and suffering in a third-party action, even though the act does not compensate for these damages, they must be used to satisfy the employer's claim for its payment of economic damages." Callaghan v. Car Parts International, L.L.C., 329 Conn. 564, 583 (2018).

uninsured motorist coverage are not within the reach of § 31-293 (a), and, therefore, that the employer has no right to recovery from those funds.”²⁶ *Id.*, 377. In evaluating the merits of the appeal, the court stated:

the insurer cannot be deemed a “third party” under the statute, because that is the position held by the actual tortfeasor; moreover, the mere fact that the insurer’s obligation to the insured is measured by the damages caused by the tortfeasor does not, of itself, transform the insurer into a surrogate for the tortfeasor for the purposes of § 31-293 (a).

Id., 385.

Finally, in Goodyear v. Discala, 269 Conn. 507 (2004), our Supreme Court reviewed an appeal brought by a municipal respondent employer seeking to intervene in an injured worker’s legal malpractice claim against the attorneys who failed to pursue a personal injury claim on his behalf against the tortfeasor who had caused his compensable injuries. The municipality’s motion to intervene had been dismissed by the trial judge for lack of standing. The Goodyear court, noting that the municipality had “voluntarily elected to forego bringing a direct action against [the tortfeasor],” *id.*, 522, held “that the legal injury that formed the basis of the plaintiff’s legal malpractice claim was not a work-related injury under § 31-293 (a) and, therefore, is not compensable under the Workers’ Compensation Act.” *Id.*, 515. The court further noted that although “a goal of the Workers’ Compensation Act is to prevent an injured employee’s double recovery for the same injury,” *id.*, 521, the act “does not protect those who are less than vigilant in

²⁶ We note that in Dodd v. Middlesex Mutual Assurance Co., 242 Conn. 375 (1997), our Supreme Court remarked that even when payments gleaned from uninsured motorist coverage are eliminated from a respondent’s moratorium, “there would be no double recovery because § 38a-334-6 of the Regulations of Connecticut State Agencies allows an insurer to insert a provision in its contract with the insured mandating a setoff equal to any amounts paid to the insured by way of workers’ compensation, thereby preventing double recovery by the employee.” (Internal footnote omitted.) *Id.*, 387.

safeguarding their own legal rights.” Skitromo v. Meriden Yellow Cab Co., 204 Conn. 485, 490 (1987), *quoting* Norwalk v. Van Dyke, 33 Conn. Sup. 661, 666, *cert. denied*, 172 Conn. 681 (1976).

In the present matter, the administrative law judge, having reviewed the foregoing precedent, did not find any of the cases “particularly relevant.” April 1, 2024 Memorandum, p. 14. The claimant contends that:

The ALJ’s assessment ... of the precedent missed the point. The point in citing these cases was not to find a perfectly analogous authority, but to prove that respondents’ rights are not so sacrosanct as to preclude any dispensations. It is plain that other exceptions have been carved from the law and that respondents’ rights are not unlimited. There have been a variety of other scenarios where lien rights or credit rights have been curtailed for a variety of reasons, so it is not heretical for the claimants here to plead for a dispensation for nonoccupational third-party settlements.

Appellant’s Brief, pp. 26-27.

We are not persuaded that the trier “missed the point,” given that he factually distinguished the cases cited by the claimant on the grounds that “[t]he recoveries at issue in our case are from tortfeasors alleged to have contributed to the [the decedent’s] mesothelioma.” April 1, 2024 Memorandum, p. 14. We also agree with the respondents’ contention that “[all] of [the recoveries made by [the decedent’s] estate were compensation for injuries that the decedent suffered during his lifetime. Therefore, all of these recoveries were completely derivative of [the decedent’s] original injuries and are subject to [the] respondents’ moratorium.” Appellees’ Brief, pp. 4-5. Moreover, the administrative law judge referenced our Supreme Court’s holding in Cruz wherein the court concluded that a “respondent’s lien rights extended even to third-party damages paid to a claimant for non-economic damages which are not compensated under the

Workers' Compensation Act.” April 1, 2024 Memorandum, p. 14. The trier remarked that although Cruz was “not precisely ... on all-fours” with the present matter, the court’s holding did “indicate just how far the law goes to protect the statutory supremacy of an employer’s right to recover their losses from liable third parties.” *Id.* Thus, in light of our own analysis of the precedent cited by the claimant, we do not believe the trier’s conclusions regarding the unpersuasiveness of these cases were in error.

It is axiomatic that the provisions of the Workers’ Compensation Act “compromise an employee’s right to a common law tort action for work-related injuries in return for relatively quick and certain compensation.” Mingachos v. CBS, Inc., 196 Conn. 91, 97 (1985). As such, “[t]he employee no longer has to prove negligence on the part of the employer, but, in return, he has to accept a limited, although certain, recovery.... The employer, in turn, guarantees compensation to an injured employee in return for the exclusivity of the workers’ compensation liability to its employees.”²⁷ (Citation omitted.) Bouley v. Norwich, 222 Conn. 744, 752 (1992).

We also note that it is “a fundamental tenet of workers’ compensation law ... that an employer takes the employee in the state of health in which it finds the employee.” Cirino v. United Parcel Service, 5841 CRB-3-13-5 (May 12, 2014), *aff’d*, 156 Conn. App. 902 (2015) (per curiam), *quoting* Epps v. Beiersdorf, Inc., 41 Conn. App. 430, 435 (1996). In addition, General Statutes § 31-349 (a)²⁸ allows a claimant suffering from a

²⁷ General Statutes § 31-293a provides in relevant part: “If an employee or, in case of his death, his dependent has a right to benefits or compensation under this chapter on account of injury or death from injury caused by the negligence or wrong of a fellow employee, such right shall be the exclusive remedy of such injured employee or dependent and no action may be brought against such fellow employee unless such wrong was willful or malicious or the action is based on the fellow employee’s negligence in the operation of a motor vehicle as defined in section 14-1....”

²⁸ General Statutes § 31-349 provides: “The fact that an employee has suffered a previous disability, shall not preclude him from compensation for a second injury, nor preclude compensation for death resulting from the second injury. If an employee having a previous disability incurs a second disability from a

prior disability to receive compensation when the claimant “incurs a second disability from a second injury resulting in a permanent disability caused by both the previous disability and the second injury which is materially and substantially greater than the disability that would have resulted from the second injury alone....” Both the “eggshell plaintiff doctrine” and the provisions of § 31-349 suggest that, in the absence of an “aggravation of a preexisting disease” as contemplated by General Statutes § 31-275 (1) (D),²⁹ a respondent employer is generally not permitted to “cherry pick” the elements of a claimant’s claim for which it will provide workers’ compensation benefits. We therefore reject the claimant’s contention that the administrative law judge erred in denying the claimant’s request to exclude from the respondents’ moratorium the

second injury resulting in a permanent disability caused by both the previous disability and the second injury which is materially and substantially greater than the disability that would have resulted from the second injury alone, he shall receive compensation for (1) the entire amount of disability, including total disability, less any compensation payable or paid with respect to the previous disability, and (2) necessary medical care, as provided in this chapter, notwithstanding the fact that part of the disability was due to a previous disability. For purposes of this section, ‘compensation payable or paid with respect to the previous disability’ includes compensation payable or paid pursuant to the provisions of this chapter, as well as any other compensation payable or paid in connection with the previous disability, regardless of the source of such compensation.”

²⁹ General Statutes § 31-275 (1) (D) provides in relevant part: “For aggravation of a preexisting disease, compensation shall be allowed only for that proportion of the disability or death due to the aggravation of the preexisting disease as may be reasonably attributed to the injury upon which the claim is based” In Deschenes v. Transco, Inc., 288 Conn. 303 (2008), our Supreme Court held that “apportionment or proportional reduction of permanent partial disability benefits is appropriate when a respondent employer is able to prove that: (1) a disability has resulted from the combination of two concurrently developing disease processes, one that is nonoccupational, and the other that is occupational in nature; and (2) the conditions of the claimant’s occupation have no influence on the development of the nonoccupational disease.” (Footnotes omitted.) *Id.*, 321. The court stated that “this conclusion is consistent with the legislature’s treatment of the aggravation of preexisting injuries under § 31–275 (1) (D), and second injuries under § 31–349 (a), in that it accommodates two axiomatic principles of workers’ compensation law, namely, that to be compensable, the injury must arise out of and occur in the course of the employment, and also ‘that an employer takes the employee in the state of health in which it finds the employee.’” (Footnotes omitted; internal quotation marks omitted.) *Id.*, 321-22, quoting Blakeslee v. Platt Bros. & Co., 279 Conn. 239, 245 (2006). Seven years after its decision in Deschenes, our Supreme Court offered the following clarification: “Nothing that this court set out in Deschenes was intended to be a departure from our traditional workers’ compensation law or an abandonment of the principle that an employer takes the employee in the state of health in which it finds the employee. Instead, Deschenes was only intended to resolve the narrow issue before it – namely, the extent of compensability when an employee incurs a disability as a result of two concurrently developing disease processes.” Sullins v. United Parcel Service, Inc., 315 Conn. 543, 559 (2015).

third-party proceeds associated with the decedent's nonoccupational exposures. Rather, we agree with the following observation made by the administrative law judge:

It has been the long-standing practice in asbestos-related compensation cases for the respondents to have all third-party payments included when calculating the extent of their credit, even when some of the payments have been made for exposures outside of the workplace. I believe the language of [§ 31-293 (a)] fully supports the current practice and the claimant has produced no case law that would warrant abandonment of this time-honored practice, a practice that is integrally incorporated in the process of resolving asbestos-based claims before this commission.

April 1, 2024 Memorandum, p. 16.

There is no error; the April 1, 2024 Finding and Award of David W. Schoolcraft, Administrative Law Judge acting for the Eighth District, is accordingly affirmed.

Administrative Law Judges Peter C. Mlynarczyk and Shanique D. Fenlator concur in this Opinion.