

**STATE OF VERMONT  
DEPARTMENT OF LABOR AND INDUSTRY**

Estate of Michael Bliss	)	Opinion No. 29-05WC
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
Speedway Safety Services, Inc.	)	For: Laura Kilmer Collins
	)	Commissioner
	)	
	)	State File No. W-03953

**RULING ON DEFENSE MOTION FOR SUMMARY JUDGMENT**

William A. O'Rourke, III, Esq. represents the Claimant in this action; Eric A. Johnson, Esq., represents the Defendant.

**ISSUE:**

Does Vermont have jurisdiction over this claim?

**UNCONTESTED FACTS:**

1. Michael Bliss (claimant) was tragically struck by a moving vehicle while moving debris from a racetrack on August 6, 2004 (accident).
2. Speedway Safety Services is a New Hampshire company with its principal place of business in New Hampshire.
3. At the time of the accident, claimant was working at Twin State Speedway, which is located in New Hampshire.
4. After the accident claimant was transported to Dartmouth Hitchcock Medical Center in New Hampshire, where he died.
5. Claimant's widow has received checks from a workers' compensation insurance carrier for a claim filed in New Hampshire.

**DISPUTED FACTS:**

1. Was claimant hired in New Hampshire or Vermont?
2. Has claimant's widow accepted benefits under the New Hampshire workers' compensation system? She stated under oath that she did not cash the checks.

## **CONCLUSIONS OF LAW:**

The defense urges this department to rule as a matter of law that this is a New Hampshire claim over which Vermont has no jurisdiction.

Summary judgment is appropriate when the moving party has demonstrated that there are no genuine issues of material fact and it is entitled to judgment as a matter of law. V.R.C.P. 56(c)(3). In determining whether a material fact exists, the party opposing the motion is entitled to all reasonable doubts and inferences. If supported with affidavits or other evidentiary material, allegations made in opposition to the motion for summary judgment are accepted as true. *White v. Quechee Lakes Landowners' Ass'n*, 170 Vt. 25, 28 (1999).

Pursuant to 21 V.S.A. § 619, “If a worker who has been hired in this state receives personal injury by accident arising out of and in the course of such employment, he shall be entitled to compensation according to the law of this state even though such injury was received outside of this state.” If hired outside this state, the worker, or in this case, surviving dependent, “is entitled to compensation for such injury under the law of the state *where he was hired*, [and] he shall be entitled to enforce against his employer his rights in this state, if his rights are such that they can be reasonably determined and dealt with by the commissioner and the court in this state.” (emphasis added).

In support of this motion, defendant cites *Fecteau v. Houghton and Churchill*, Dckt No. 251-10-91 Cacv, (1993), a case in which Judge Suntag granted a defense motion for summary judgment. In *Fecteau*, the claimant had the choice between Maine and Vermont law under § 619, chose the Maine workers’ compensation system for benefits and later sought to avail himself of Vermont benefits. The court noted that significant contacts were in Maine, including place of injury, place of conduct and domicile of parties, that the doctrine of *lex loci delicti* applied. *Fecteau* at 4-5. Therefore, it held that Maine law applied.

In this case, the location of significant contacts, state of hire and whether claimant’s widow chose New Hampshire workers’ compensation benefits are material disputed facts precluding the grant of summary judgment.

## **ORDER:**

Accordingly, the defense motion for summary judgment is DENIED.

Dated at Montpelier, Vermont this 27<sup>th</sup> day of April 2005.

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Laura Kilmer Collins  
Commissioner