

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Brandy Clayton

Opinion No. 13S-16WC

v.

By: Phyllis Phillips, Esq.
Administrative Law Judge

J.C. Penney Corporation

For: Anne M. Noonan
Commissioner

State File No. GG-61153

**RULING ON DEFENDANT'S MOTION FOR STAY AND IN THE ALTERNATIVE
FOR PERMISSION TO TAKE INTERLOCUTORY APPEAL**

Defendant moves to stay the Commissioner's August 24, 2016 Order pursuant to 21 V.S.A. §675. Alternatively, it moves for permission to take an interlocutory appeal on the legal question decided therein of whether the parties' September 24, 2014 approved settlement agreement bars Claimant as a matter of law from asserting a claim for workers' compensation benefits on account of her alleged March 10, 2015 work-related right foot injury.

To prevail on a request for a stay, the moving party must demonstrate *all* of the following:

1. That it is likely to succeed on the merits;
2. That it will suffer irreparable injury if a stay is not granted;
3. That issuing a stay will not substantially harm the other party; and
4. That the best interests of the public will be served by issuing a stay.

In re Insurance Services Office, Inc., 148 Vt. 634, 635 (1987).

As contemplated by the legislature, the granting of a stay must be the exception, not the rule. *Bodwell v. Webster Corp.*, Opinion No. 62S-96WC (December 10, 1996). Applying this stringent standard, I find that Defendant has failed to establish its right to a stay.

For a trial court to grant a party permission to take an interlocutory appeal, the criteria are somewhat less strict, however. In reviewing such a request, Vermont Rule of Appellate Procedure 5(b)(1) requires only that the ruling "involve a controlling question of law about which there exists substantial ground for difference of opinion," and that an immediate appeal "may materially advance the termination of litigation." *V.R.A.P. 5(b)(1)(A) and (B)*; see, e.g., *Dodge v. Precision Construction Products*, Opinion No. 38-01WC (December 5, 2001).

The decision whether to grant or deny permission to take an interlocutory appeal rests in the sound discretion of the trial court. *State v. McCann*, 149 Vt. 147, 151 (1987). I conclude here that the criteria for granting permission have been met. The legal issue presented involves a controlling question of law of whether a workers' compensation settlement that purports to cover not only injuries arising from a pending claim but also those that might arise from completely unrelated causes in the future is impermissibly broad. There are substantial grounds for

difference of opinion as to the correctness of the Commissioner's ruling, including whether she forfeited her right to void the objectionable portions of the agreement by initially approving it when it was first submitted for her review. And regardless of the Supreme Court's ruling, an immediate appeal might materially advance the termination of litigation ó if it reverses the Commissioner's order, the pending claim will be forever barred; if it affirms it, it will likely be settled.

Defendant's Motion for Stay is hereby **DENIED**. Defendant's Motion for Permission to Take Interlocutory Appeal is hereby **GRANTED**.

DATED at Montpelier, Vermont this 13th day of October 2016.

Anne M. Noonan
Commissioner