

**STATE OF VERMONT
DEPARTMENT OF LABOR**

John J. Bartimoccia

Opinion No. 01-20WC

v.

By: Stephen W. Brown
Administrative Law Judge

Hulett Trucking, LLC

For: Michael A. Harrington
Interim Commissioner

State File No. LL-55598

**RULING ON CLAIMANT’S MOTION FOR SUMMARY JUDGMENT AND
DEFENDANT’S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

APPEARANCES:

Wesley L. Pollock, Esq., for Claimant
Jennifer K. Moore, Esq., for Defendant

ISSUE PRESENTED:

Does Vermont’s seatbelt statute, 23 V.S.A. § 1259, preclude Defendant from asserting a defense under 21 V.S.A. § 649 based on Claimant’s alleged failure to wear a seatbelt during a work-related automobile accident?

EXHIBITS:

Claimant’s Statement of Undisputed Material Facts (“CSUMF”)

Claimant’s Exhibit 1	May 13, 2019 Notice and Application for Hearing (Form 6)
Claimant’s Exhibit 2	May 14, 2019 Correspondence from Department of Labor
Claimant’s Exhibit 3	May 29, 2019 Correspondence from Defendant’s Counsel
Claimant’s Exhibit 4	June 11, 2019 Correspondence from Department of Labor

Defendant’s Statement of Undisputed Material Facts (“DSUMF”)

Defendant’s Exhibit A	October 24, 2018 Medical Records from Southwestern Vermont Medical Center
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BACKGROUND:

The following material facts are undisputed:

1. This claim arises out of a 2018 automobile roll-over that occurred during Claimant’s employment with Defendant. *See* CSUMF 1-3; DSUMF 1-2. Defendant asserts that Claimant was not wearing a seatbelt at the time of the accident. *See* CSUMF 4-5; DSUMF 2.

CONCLUSIONS OF LAW:

Summary Judgment

1. To prevail on a summary judgment motion, the moving party must show that there exist no genuine issues of material fact, such that it is entitled to judgment in its favor as a matter of law. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996). In ruling on such a motion, the non-moving party is entitled to the benefit of all reasonable doubts and inferences. *State v. Delaney*, 157 Vt. 247, 252 (1991); *Toys, Inc. v. F.M. Burlington Co.*, 155 Vt. 44, 48 (1990).

Relevant Statutory Provisions

2. This case involves the intersection of two statutory provisions: 21 V.S.A. § 649 and 23 V.S.A. § 1259(c).
3. On the one hand, 21 V.S.A. § 649 provides that workers' compensation benefits "shall not be allowed for an injury caused by ... an employee's failure to use a safety appliance provided for his or her use." *Id.* Defendant contends that Claimant's non-use of a seatbelt was a failure to use a "safety appliance provided for his use," thus barring his claim under 21 V.S.A. § 649. Defendant bears the burden of proof on this affirmative defense. *See id.*
4. On the other hand, 23 V.S.A. § 1259 is Vermont's seatbelt statute. Subject to enumerated exceptions, this statute imposes criminal liability on the operator of a motor vehicle if any adult is occupying a seat with a federally approved safety belt but is not wearing it. *See id.* However, Subsection (c) of the statute provides that "[n]oncompliance with the provisions of this section shall not be admissible as evidence in any civil proceeding." *Id.*
5. Citing the seatbelt statute's exclusionary rule, Claimant contends Defendant cannot lawfully present any evidence that Claimant was not wearing his seatbelt at the time of the accident. Without that evidence, he argues, Defendant cannot prevail on its "safety appliance" defense under Section 649.¹

Workers' Compensation Proceedings Are Not "Civil Proceedings"

6. By its terms, the seatbelt statute's exclusionary rule only applies to "any civil proceeding." 23 V.S.A. § 1259(c). Therefore, it only applies to workers' compensation cases if they are "civil" in nature. For the reasons below, I conclude that they are not.
7. Neither the seatbelt statute nor any other provision of Title 23 of the Vermont Statutes defines "civil proceeding." *See generally id.* However, that phrase is a well-developed

¹ Defendant has not moved for summary judgment on the merits of this defense, but simply seeks to preserve its right to present evidence of Claimant's alleged non-use of his seatbelt in order to prove the defense at a formal hearing.

jurisdictional concept with foundations in the Vermont Constitution and Title 4 of the Vermont Statutes.

8. In particular, the Vermont Constitution provides that courts other the Supreme Court “may exercise equity jurisdiction as well as law jurisdiction *in civil proceedings* as may be provided by law or by judicial rules not inconsistent with law.” Vt. Const. CH II, § 31 (emphasis added).
9. Pursuant to that provision, the Legislature created the Vermont Superior Court, divided into five divisions, including a Civil Division. *See* 4 V.S.A. § 30(a)(1)(A). That Division has “original and exclusive jurisdiction of all *original civil actions*, except as otherwise provided in sections 2,² 32,³ 33,⁴ 34,⁵ 35,⁶ and 1102⁷” of Title 4. 4 V.S.A. § 31(1) (emphasis added). None of the sections cited therein contain any exceptions for workers’ compensation claims. *See generally id.*
10. Therefore, if a workers’ compensation claim were a civil proceeding, the Civil Division of the Vermont Superior Court would have “exclusive jurisdiction of all original” workers’ compensation claims. 4 V.S.A. § 31(1). It does not.
11. Specifically, in 1913, the Vermont Constitution was amended to specially authorize the Legislature to pass workers’ compensation laws as follows:

The General Assembly may pass laws compelling compensation for injuries received by employees in the course of their employment resulting in death or bodily hurt, for the benefit of such employees, their widows, widowers or next of kin. It may designate the class or classes of employers and employees to which such laws shall apply.

Vt. Const. CH II, § 70.

12. The Legislature passed such a law in 1915, namely the Workers’ Compensation Act, 21 V.S.A. §§ 601 *et seq.* It contemporaneously created the Department of Labor to administer that Act and other labor laws. *See* 21 V.S.A. § 1(a); *see also* 21 V.S.A. § 606.⁸

² Section 2 sets forth the jurisdiction of the Vermont Supreme Court.

³ Section 32 sets forth the jurisdiction of the Criminal Division of the Vermont Superior Court, which includes certain limited civil matters.

⁴ Section 33 sets forth the jurisdiction of the Family Division of the Vermont Superior Court.

⁵ Section 34 sets forth the jurisdiction of the Environmental Division of the Vermont Superior Court.

⁶ Section 35 sets forth the jurisdiction of the Probate Division of the Vermont Superior Court.

⁷ Section 1102 sets forth the jurisdiction of the Judicial Bureau.

⁸ Although not essential to the resolution of whether workers’ compensation proceedings are “civil,” it is noteworthy that the foregoing provisions, together with the legislative mandate that the Department make rules

13. Construing a state constitutional and statutory framework nearly identical to Vermont's, the Supreme Court of Pennsylvania held that workers' compensation proceedings are *sui generis* in a "significant, constitutional sense" and are therefore not "civil actions." *East v. W.C.A.B.*, 574 Pa. 16 (2003). In *East*, a minor child sought workers' compensation benefits for the death of his alleged father through his mother as next friend. In response to a statute of limitations defense, the mother argued that her child's limitations period was tolled until the child reached the age of majority. She relied upon a Pennsylvania tolling statute applicable to "civil actions" of unemancipated minors. *See id.* at 20-21.
14. In holding that workers' compensation claims were not "civil actions" under that statute, the Court noted that the Pennsylvania legislature's constitutional authority to enact workers' compensation laws came from a state constitutional provision that, like Vermont's,⁹ expressly empowers it to create proceedings and limit recoveries in employment-related injuries and disabilities. *See id.* at 24.¹⁰
15. As in Vermont,¹¹ the Pennsylvania legislature implemented that constitutional authority by passing a workers' compensation statute, which provided "uniquely detailed substantive and procedural provisions" concerning employees' rights on account of workplace injuries that replaced traditional common law rights and remedies that had previously been the subject of civil actions. *Id.* at 25.
16. Like Vermont's seatbelt statute,¹² Pennsylvania's tolling statute does not specifically define the term "civil action." However, that term is well-developed in other areas of Pennsylvania law. *See id.* at 25-26. Like Vermont's statute governing the Superior

to administer the Act, *see* 21 V.S.A. § 602(a), render the Department an "agency" subject to the Vermont Administrative Procedure Act ("APA"). *See* 3 V.S.A. § 801(b)(1). Although the APA exempts the Department from certain of its provisions concerning the process for resolving contested hearings in workers' compensation cases, *see* 3 V.S.A. § 816(a)(3), the rest of the APA applies to the Department. This further distinguishes the statutory framework applicable to workers' compensation proceedings from civil actions, which by law (and not by choice) are governed by the Vermont Rules of Civil Procedure. *See* 4 V.S.A. § 30(a)(1)(A).

⁹ *Cf.* Conclusion of Law No. 11, *supra*.

¹⁰ The relevant portion of the Pennsylvania Constitution is Pa. Const. art. III, § 18, which provides in relevant part as follows:

"The General Assembly may enact laws requiring the payment by employers, or employers and employes [*sic*] jointly, of reasonable compensation for injuries to employes [*sic*] arising in the course of their employment, and for occupational diseases of employes [*sic*], whether or not such injuries or diseases result in death, and regardless of fault of employer or employe [*sic*], and fixing the basis of ascertainment of such compensation and the maximum and minimum limits thereof, and providing special or general remedies for the collection thereof[.]"

¹¹ *Cf.* Conclusion of Law No. 12, *supra*.

¹² *Cf.* Conclusions of Law Nos. 4, 6, *supra*.

Court's jurisdiction,¹³ Pennsylvania's Judicial Code vests original jurisdiction over all "civil actions or proceedings" in the Commonwealth Court, subject to enumerated exceptions. *See id.* at 27 (citing 42 Pa.C.S.A. § 761(b)(1)).

17. Moreover, like Vermont's conferral of jurisdiction over workers' compensation claims to this Department,¹⁴ Pennsylvania law confers original and exclusive jurisdiction in workers' compensation judges within the Department of Labor and Industry. *See id.* (citing 77 P.S.A. §§ 701, 710).
18. Construing all of these provisions together, the Court in *East* held that the term "civil action," as used in the Pennsylvania tolling statute, did "not include workers' compensation proceedings," and that therefore the tolling statute did not apply. *Id.* at 28. Thus, the child's claim was time-barred. *Id.*
19. I find the reasoning in *East* persuasive and analogous to the legal issues here in all material respects. Accordingly, I hold that Vermont workers' compensation administrative proceedings are *sui generis* and are not "civil proceedings" within the meaning of the seatbelt statute. That statute's exclusionary rule thus does not govern this proceeding.¹⁵

Statutory Rules of Evidence Do Not Bind the Department

20. In adjudicating workers' compensation cases, the Department "shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure except as provided in [the Workers' Compensation Act]." 21 V.S.A. § 604. It may "make such investigation or inquiry or conduct such hearing or trial in such manner as to ascertain the substantial rights of the parties." *Id.*
21. The seatbelt statute's exclusionary rule appears in a statute. It says that specific evidence will not be admissible as evidence in certain kinds of proceedings. *See generally* 23 V.S.A. § 1259(c). As such, it is a statutory rule of evidence and thus does not bind the Department in this case. *See* 21 V.S.A. § 604.¹⁶

¹³ *Cf.* Conclusion of Law No. 9, *supra*.

¹⁴ *Cf.* 21 V.S.A. § 606 ("Questions arising under the provisions of this chapter, if not settled by agreement of the parties interested therein with the approval of the Commissioner, shall be determined, except as otherwise provided, by the Commissioner.").

¹⁵ Nothing in Workers' Compensation Rule 17.1100 requires a different result. That Rule provides that "in general [workers' compensation] hearings shall be conducted in accordance with the Vermont Rules of Civil Procedure and the Vermont Rules of Evidence, but only insofar as they do not defeat the informal nature of the hearing." *Id.* This limited adoption of rules applicable to civil cases is a matter of administrative convenience in order to avoid reinventing the wheel by creating a completely new process for resolving disputed claims when there is a ready body of familiar and well-considered rules designed for that very purpose. This voluntary incorporation does not transform a *sui generis* administrative proceeding into a civil one.

¹⁶ Claimant argues that the Department's decision in *White v. Town of Hartford and Town of Hartland*, Opinion No. 14-19WC (July 25, 2019) supports the application of Section 1259(c) in this proceeding. I find it difficult to understand his argument in this regard. In *White*, I held that the Department had the power to issue declaratory

Conclusion

22. Given that workers' compensation proceedings are administrative rather than civil in nature, 23 V.S.A. § 1259(c) does not apply to workers' compensation claims. Because 23 V.S.A. § 1259(c) is a statutory rule of evidence, the Department is not bound by it. *See* 21 V.S.A. § 604. Neither the Workers' Compensation Act nor Rules incorporate 23 V.S.A. § 1259(c). Therefore, the seatbelt statute's exclusionary rule does not apply in this case.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Claimant's Motion is **DENIED**, and Defendant's Motion is **GRANTED IN PART** and **DENIED IN PART**.

I conclude that 23 V.S.A. § 1259(c) does not preclude evidence of Claimant's use or non-use of a seatbelt in a workers' compensation proceeding before the Department. The parties may lawfully introduce such evidence in support of, or in response to, an affirmative defense under 21 V.S.A. § 649. Nothing in this decision shall constitute a ruling on the merits of any affirmative defense.

To the extent that Defendant seeks any broader holding, its Motion is **DENIED**.

DATED at Montpelier, Vermont this 7 day of January 2020.

Michael A. Harrington
Interim Commissioner

rulings based on a series of neatly nested incorporations by reference that worked together to satisfy a statutory mandate. Specifically, the APA mandates that each agency provide for the "filing and prompt disposition of petitions for declaratory rulings[.]" and may do so "by procedure or rule." *Id.* (citing 3 V.S.A. § 808). I determined that Workers' Compensation Rule 17.1100's partial incorporation of the Vermont Rules of Civil Procedure, *see* fn. 15, *supra*, satisfies this mandate because V.R.C.P. 57 provides a process for obtaining declaratory judgments. That Rule, in turn, incorporates a statutory provision relating to the declaratory powers of superior courts. *See id.* (citing V.R.C.P. 57 (citing 12 V.S.A. § 4711)). Construing those provisions together, I held that the Department possessed declaratory powers. *See generally id.* The statutes at issue here do not interact in any analogous way: the seatbelt statute does not appear in, and is neither referred to nor incorporated into, the Workers' Compensation Act or Rules, the Vermont Rules of Civil Procedure, or the Vermont Rules of Evidence. Nor is there any mandate in the APA or any other applicable body of law requiring the Department to exclude evidence of seatbelt non-usage. Claimant's citation to *White* is therefore inapposite.