STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MARVIN PERRY, in his capacity as DIRECTOR OF THE DEPARTMENT OF LABOR AND TRAINING	)	
VS.	)	W.C.C. 2004-01929
DERCO, LLC, and MICHAEL DERDERIAN and JEFFREY DERDERIAN	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division pursuant to the respondents' claim of appeal from the decision and decree of the trial judge in which he determined that Michael Derderian and Jeffrey Derderian are severally personally liable for the administrative penalty of One Million Sixty-six Thousand ($1,066,000.00) Dollars assessed by a hearing officer of the Department of Labor and Training against DERCO, LLC. After a thorough review of the record and consideration of the arguments put forth by the respective parties in the reasons of appeal and memoranda, we deny the respondents' appeal and affirm the decision and decree of the trial judge.

A brief narration of the history of this litigation is necessary to understand the limited issues which this tribunal must address. On March 5, 2003, the Department of Labor and Training (the "Department") issued a complaint against the respondents alleging that they had failed to obtain workers' compensation insurance in violation of R.I.G.L. § 28-36-15. The complaint listed the employer as DERCO, LLC ("DERCO"), and the responsible parties as

Michael Derderian, a manager/member, and Jeffrey Derderian, a manager/member. On March 17, 2003, the Department sent a letter to DERCO and each of the Derderians, notifying them of a hearing regarding the complaint to be held on April 1, 2003.

The parties submitted a document dated March 31, 2003, entitled "STIPULATION" in which they agreed to the following facts:

> "1. DERCO, LLC, is a limited liability corporation duly organized and existing under the law of the State of Rhode Island.
>
> 2. Attached hereto are records from the Office of the Secretary of State, Corporations Division regarding DERCO, LLC.
>
> 3. From March 22, 2000 through February 20, 2003, DERCO, LLC, operated a business known as The Station, and during that time frame did employ one (1) or more persons.
>
> 4. From March 22, 2000, through February 20, 2003, DERCO, LLC, did not have or maintain workers' compensation insurance coverage as required by Chapter 33-36 of Title 28 of the Rhode Island General Laws.
>
> 5. That DERCO, LLC, ceased operating its business on February 20, 2003, due to a fire that destroyed The Station facility.
>
> 6. The sole issue for determination is the reasonableness and amount of an administrative penalty, if any.
>
> 7. The Department of Labor and Training and the Company agree that the Department will submit a written memorandum herein on the issue of a penalty within 14 days from the date hereof, The Company will submit a written memorandum in response thereto within 30 days from the date hereof."

The stipulation was signed by the attorney for the Department, an attorney for Jeffrey Derderian, and an attorney for DERCO, who also signed as attorney for Michael Derderian. The hearing officer for the Department objected to the time periods for filing of memoranda and these were modified to seven (7) days. In a supplemental stipulation dated April 8, 2003, the parties agreed that "[t]he current annual workers' compensation premium for Derco, LLC would be $1,891.20

based upon an annual payroll of less than $50,000." No other documents or testimony were presented to the hearing officer.

On April 9, 2003, the hearing officer issued his decision and entered an order (1) assessing an administrative penalty in the amount of One Million Sixty-six Thousand ($1,066,000.00) Dollars against DERCO for failure to secure workers' compensation insurance from March 22, 2000 to February 20, 2003, and (2) referring the matter to the Attorney General for prosecution of criminal charges against DERCO and, if warranted, the Derderians. The amount of the penalty was based upon an assessment of One Thousand ($1,000.00) Dollars per day for 1,066 days (the number of days from March 22, 2000 to February 20, 2003). The penalty was assessed only against DERCO because the hearing officer found that R.I.G.L. § 28-36-15 allowed imposition of liability on corporate officers only in criminal actions brought by the Attorney General under the statute.

On April 10, 2003, DERCO filed an appeal from the hearing officer's decision and order, contending that the amount of the penalty is grossly excessive in violation of the federal and state constitutions and that the statute does not permit assessment of a penalty and referral to the Attorney General for criminal prosecution (W.C.C. No. 2003-02556). On May 9, 2003, the Department filed an appeal from the hearing officer's decision and order with the Workers' Compensation Court (WCC), alleging that the hearing officer erred as a matter of law in failing to assess the penalty against the Derderians in their individual capacities as members/managers of DERCO (W.C.C. No. 2003-03222).

These two (2) matters were consolidated before a single trial judge of the WCC, Judge Bruce Q. Morin. The two (2) petitions were heard in accordance with Rule 2.31 of the Rules of Practice of the Workers' Compensation Court (now Rule 2.32) which establishes the procedure

for review of decisions of the Department. The review by the court is limited to the record developed before the hearing officer at the Department. The court may reverse or modify the decision of the hearing officer if it is:

> (1) In violation of constitutional authority of the agency;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law:
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

On July 24, 2003, Judge Morin rendered a bench decision addressing both of the appeals. With regard to W.C.C. No. 2003-02556, the trial judge denied the appeal and found that DERCO's rights to due process and equal protection had not been violated and that the amount of the penalty did not violate constitutional prohibitions against excessive fines and penalties. He also concluded that the language of R.I.G.L. § 28-36-15 allowed the Director of the Department to elect to proceed civilly or criminally and to assess an administrative penalty. Therefore, he affirmed the hearing officer's assessment of the penalty and referral to the Attorney General for criminal prosecution.

In W.C.C. No. 2003-03222, the trial judge found that the hearing officer was clearly erroneous in concluding that the Derderians could not be held personally liable for the administrative penalty under the provisions of R.I.G.L. § 28-36-15. He therefore remanded the matter to the hearing officer to determine whether to assess a penalty against Michael and/or Jeffrey Derderian and to set the amount of the penalty. On August 4, 2003, orders were entered in each matter consistent with the trial judge's decision.

On August 5, 2003, DERCO and the Derderians filed claims of appeal in both matters.

The appellate panel's decision and decree was entered on October 30, 2003. In W.C.C. No. 2003-02556, the appellate panel rejected DERCO's claims of violations of the due process, equal protection, and excessive fines clauses of both the United States and Rhode Island Constitutions. The assertion by DERCO that the statute authorized the hearing officer to assess a penalty or refer the matter to the Attorney General for criminal prosecution, but not do both, was also rejected. With regard to the companion matter, W.C.C. No. 2003-03222, the appellate panel concluded that the trial judge was correct in finding that R.I.G.L. § 28-36-15 authorizes the hearing officer of the Department to assess an administrative penalty against corporate officers individually. The panel affirmed the remand to the hearing officer with instructions to determine whether the Derderians' status as managers of a limited liability company (DERCO) is within the meaning of the term "corporate officers" as utilized in R.I.G.L. § 28-36-15, and if so, to determine whether they should be fined.

On February 27, 2004, the hearing officer issued his decision pursuant to the remand from the WCC. After reviewing the language of the statute, he concluded that managers of a limited liability company did not fall within the meaning of the term "corporate officers" in R.I.G.L. § 28-36-15 and, therefore, he had no jurisdiction to impose a penalty or fine against the Derderians individually or in their capacity as members or managers of DERCO. On March 17, 2004, the Director of the Department filed a petition, W.C.C. No. 2004-01929, at the WCC, appealing the decision of the hearing officer. This matter was assigned to Judge John Rotondi, Jr., for review and decision pursuant to Rule 2.31 of the Rules of Practice of the Workers' Compensation Court.

While this matter was pending before Judge Rotondi, the Legislature amended R.I.G.L. § 28-36-15, effective July 2, 2004. *See* P.L. 2004, ch. 293, § 4. The amendment modified the

statute to specifically add members and managers of limited liability companies, as well as general and limited partners of partnerships, to those corporate officers who may be held jointly liable for fines, penalties and terms of imprisonment imposed upon employers who fail to secure workers' compensation insurance for their employees.

On August 25, 2004, the decision and decree of Judge Rotondi was entered in W.C.C. No. 2004-01929, in which he found that the hearing officer erred as a matter of law in finding that managers or members of a limited liability company were not subject to the penalties provided in R.I.G.L. § 28-36-15. He determined that Michael and Jeffrey Derderian were the managers of DERCO and as such each can be held personally liable for the administrative penalty previously assessed against DERCO by the hearing officer on April 9, 2003. On August 31, 2004, the Derderians filed a claim of appeal from this decision and decree which is presently before the Appellate Division.

The Derderians filed their reasons of appeal on September 27, 2004 and the matter was assigned for a settlement conference. The case was continued a number of times and eventually assigned for oral argument on March 2, 2005. On September 23, 2005, DERCO and the Derderians filed for bankruptcy protection under Chapter 7 of the Bankruptcy Code, which effectively placed a hold on any further action in the WCC. Apparently, unbeknownst to the court, a judgment was entered in the United States Bankruptcy Court on January 3, 2007 which found that the fine/penalty assessed against Michael and Jeffrey Derderian is non-dischargeable in bankruptcy. On September 13, 2010, the bankruptcy case involving DERCO was closed by order of the Bankruptcy Court. After having been advised of the closure of the bankruptcy proceedings and the non-discharge of the administrative fine/penalty assessed against the Derderians by Judge Rotondi, we proceed to render our decision in this matter.

The parameters of our review of the decision of the trial judge are very narrow and deferential. Rhode Island General Laws § 28-35-28(b) provides that "[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous." In conducting our review in this case, the appellate panel is confined to the record made before the hearing officer of the Department, which consists of the two (2) written stipulations submitted by the parties and the records regarding DERCO obtained from the Secretary of State's office which were attached to the first stipulation. Because the parties have agreed to the underlying facts, our focus is on whether the trial judge properly applied the law to those facts in rendering his decision.

The Derderians have filed seven (7) reasons of appeal; however, several of the issues they raise were previously decided by the Appellate Division in the decision rendered in the consolidated appeals in W.C.C. Nos. 2003-02556 and 2003-03222. In their second reason of appeal, the Derderians contend that the trial judge erred in overlooking or ignoring their argument that the version of R.I.G.L. § 28-36-15 in effect in February 2003, did not authorize the assessment of an administrative penalty against them as individuals, even if their status as managers/members was considered equivalent to a "corporate officer." This issue was addressed by Judge Morin in W.C.C. No. 2003-03222, and then by the Appellate Division on appeal in that matter. In its decision, the Appellate Division concluded:

> "Relying on the plain meaning of the statute, the legislature clearly intended to give the Director, in his or her discretion, the authority to assess a monetary administrative penalty against corporate officers when an employer fails to secure the required workers' compensation coverage."

Marvin Perry v. Michael Derderian and Jeffrey Derderian, W.C.C. No. 2003-03222 at 13 (App. Div. 10/30/03). As stated in R.I.G.L. § 28-35-28(a), "the decision of the appellate panel shall be

binding on the court." We will not reconsider an issue which has already been addressed by the Appellate Division, particularly in this case which involves the same litigation which was the subject matter of that appeal.

In the third reason of appeal, the Derderians argue that the trial judge was clearly wrong to impose an administrative penalty rather than remand the matter to the hearing officer at the Department for an additional hearing regarding determination of the amount of the penalty. They contend that imposition of the penalty without further hearing violates the Due Process Clauses and the Equal Protection Clauses of both the United States and Rhode Island Constitutions.

Rhode Island General Laws § 28-36-15 provides that corporate officers shall be held severally liable for fines or penalties assessed against the employer for failure to secure workers' compensation insurance. Several liability means that each individual is independently liable for the same fine, penalty or judgment. Rhode Island General Laws § 28-36-15 provides for the assessment of one penalty against the employer and makes corporate officers severally liable for that penalty. The statute does not contemplate assessment of separate and distinct penalties or fines against each individual in addition to the employer.

The Derderians further argue that they were entitled to an evidentiary hearing before a hearing officer of the Department before the imposition of any penalty on them individually. This contention overlooks the fact that the Derderians had an opportunity to present whatever evidence they wished at the hearing before the hearing officer on April 1, 2003. The Derderians, along with DERCO, were notified of this hearing and were listed as responsible parties in the complaint issued by the Department. Instead of presenting any evidence during the hearing, they chose to submit a stipulation of agreed upon facts to the hearing officer in which they

acknowledged that the only issue before the hearing officer was the determination of the amount of the administrative penalty, if any. The only other evidence submitted by the parties was a second stipulation regarding the estimated annual premium for DERCO for workers' compensation insurance. The Derderians were provided with their opportunity to be heard and present evidence at the hearing on April 1, 2003. We find no grounds for providing a second opportunity at this point in the litigation.

The fourth, fifth, and sixth reasons of appeal contain various arguments regarding the amount of the administrative penalty for which the Derderians were found severally liable. In his initial decision entered on April 9, 2003, the hearing officer assessed an administrative penalty in the amount of One Million Sixty-six Thousand ($1,066,000.00) Dollars against DERCO. DERCO filed a petition with the WCC appealing the hearing officer's decision as to the amount of the penalty. Judge Morin, in his decision in W.C.C. No. 2003-02556, addressed the constitutional arguments raised by DERCO regarding the amount of the penalty and affirmed the hearing officer's decision. DERCO filed a claim of appeal and the Appellate Division, in its decision and decree entered on October 30, 2003, affirmed the decision of Judge Morin.

As discussed above, the Derderians have been found severally liable for the penalty assessed against DERCO. Consequently, the constitutional arguments regarding the amount of the penalty presented in their fourth, fifth, and sixth reasons of appeal have already been ruled upon by the Appellate Division in W.C.C. No. 2003-02556 and we are bound by that ruling. Any further argument as to the amount of the penalty must be taken up in the context of DERCO's pending petition for writ of certiorari in the Rhode Island Supreme Court regarding W.C.C. No. 2003-02556.

The only arguments which this panel must address are presented in the first and seventh reasons of appeal. In the first reason of appeal, the Derderians contend that the trial judge erred in concluding that the status of Jeffrey and Michael Derderian as managers/members of a limited liability company (an LLC) was within the meaning of "corporate officers" as that term is used in the version of R.I.G.L. § 28-36-15 in effect on the date of the events which triggered this litigation. They argue that inclusion of managers/members of an LLC in the term "corporate officers" is an unwarranted extension of the statute and conflicts with state law regarding LLCs.

Rhode Island General Laws § 28-36-15(a) provides in pertinent part:

> "Any employer required to secure the payment of compensation under chapters 29—38 of this title who knowingly fails to secure that compensation is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000) for each day of noncompliance with the requirements of this title. * * * The director may, in his or her discretion, assess an administrative penalty of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000) per day for each day of noncompliance and/or bring a civil action in any court of competent jurisdiction, or refer the matter to the attorney general for prosecution of criminal charges. * * * Each day constitutes a separate and distinct offense for calculation of the fine; provided, that in no case may imprisonment be for more than one year, and in any case where that employer is a corporation, the president, vice president, secretary, and treasurer of the corporation are also severally liable to the fine or imprisonment." (Emphasis added.)

The statute also states that the president, vice president, secretary, and treasurer of the corporation are severally personally liable jointly with the corporation for any workers' compensation benefits due to an employee who was injured while the corporation did not have insurance coverage.

In construing the provisions of the Workers' Compensation Act, we are guided by the basic principle that "[t]he provisions of the Workers' Compensation Act are to be liberally

construed to effectuate the benevolent purpose that led to its enactment." Fontaine v. Caldarone, 122 R.I. 768, 771, 412 A.2d 243, 245 (1980). We are mindful of the general tenet that "[a]bsent a contrary intent the words in a statute must be given their plain and ordinary meaning." D'Ambra v. North Providence Sch. Comm., 601 A.2d 1370, 1374 (R.I. 1992) (citations omitted). However, the Rhode Island Supreme Court has also stated that

> "[i]f a mechanical application of a statutory definition produces an absurd result or defeats legislative intent, this court will look beyond mere semantics and give effect to the purpose of the act."

State v. Delaurier, 488 A.2d 688, 694 (R.I. 1985).

After reviewing the relevant statutes, we agree with the trial judge's reasoning and his conclusion that managers of an LLC perform the same functions as corporate officers and therefore can be held personally liable for an administrative penalty assessed pursuant to R.I.G.L. § 28-35-16. The statute clearly expresses an intent to hold all employers liable for failure to secure workers' compensation insurance for the protection of their employees. To further emphasize the importance of this responsibility, the statute also imposes personal liability on those individuals who would normally be shielded from such liability, because they are held responsible for ensuring that insurance coverage is in place by virtue of their positions as corporate officers.

The Rhode Island Limited Liability Company Act was enacted in 1992. *See* R.I.G.L. § 7-16-1 *et seq.* The Act authorized the formation of a new type of business entity which provided limited liability to those with an ownership interest in the business (the "members") and allowed members to elect to be treated as a partnership or a corporation for taxation purposes. The statute defines a "member" as a person with an ownership interest in the LLC. R.I.G.L. § 7-16-2(16). A "manager" is an individual designated by the members of an LLC to manage the

business. R.I.G.L. § 7-16-2(15). The LLC is required to file articles of organization with the Secretary of State which must contain a statement as to how the company wishes to be treated for tax purposes and also a statement as to whether the LLC will be managed by the members or by one or more managers. R.I.G.L. § 7-16-6(a)(3)-(6). If the articles of organization or a separate operating agreement do not provide for management of the company by one or more managers, then the members are deemed to be the managers and each has the power and authority and is subject to all the duties and liabilities of a manager. R.I.G.L. § 7-16-14.

A manager of an LLC is charged with performing his or her duties "in good faith, with the care that an ordinarily prudent person in a similar position would use under the circumstances, and in the manner the manager reasonably believes to be in the best interest of the limited liability company." R.I.G.L. § 7-16-17(a). The statute also provides that every manager is an agent of the LLC for the purpose of conducting its business and affairs. R.I.G.L. § 7-16-20(a). The personal liability of a manager to the LLC or its members for monetary damages for breach of any duty may be eliminated or limited by the articles of organization or separate operating agreement, except for "[a]cts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law." R.I.G.L. § 7-16-18.

The articles of organization for DERCO were filed in the Secretary of State's office on November 24, 1999. The document does not state that the liability of the managers is limited in any way and no separate operating agreement was ever produced. The articles state that the LLC will be managed by its members. In subsequent annual reports filed with the Secretary of State, both Michael and Jeffrey Derderian are listed as managers. In support of their contention that they are not subject to the administrative penalty, the Derderians cite Rhode Island General Laws § 7-16-70, which states that "[a] member of a limited liability company is not a proper party to

proceedings by or against a limited liability company," with certain exceptions not applicable in this matter. (Emphasis added.) Based upon the records of the Secretary of State, which were attached to the stipulation submitted to the hearing officer at the Department in the first hearing, and the provisions of the LLC Act, the Derderians are not simply members, they are also the managers of DERCO. Consequently, this statute would not apply.

Admittedly, R.I.G.L. § 28-36-15 does not specifically name an LLC and its managers or members as those who may be found liable for the failure to secure workers' compensation insurance. However, essentially acknowledging that it may be impossible to insert reference to the newly created business entity in every appropriate section of the general laws, the Legislature included a "catch-all" provision in the LLC Act which states:

> "Unless the provisions of this chapter or the context indicate otherwise, each reference in the general laws to a "person" is deemed to include a limited liability company, and each reference to a 'corporation', except for references in the Rhode Island Business and Nonprofit Corporation Acts, and except with respect to taxation, is deemed to include a limited liability company."

R.I.G.L. § 7-16-73(a). An LLC does not have those corporate officers listed in R.I.G.L. § 28-36-15 (a president, vice president, secretary and treasurer), but it does have managers who perform the same functions as those officers and therefore should be treated similarly.

The Derderians argue that they are shielded by the façade of their LLC from any type of liability. We believe that the Legislature never intended to protect those who manage the affairs of an LLC to flagrantly violate the law for almost three (3) years, to the detriment of their employees, when it allowed the creation of that form of business entity. To adopt such a position would be in direct conflict with the intent and purpose of the Workers' Compensation Act and would lead to an absurd result.

Furthermore, the Legislature amended R.I.G.L. § 28-36-15 again in 2004. *See* P. L. 2004, ch. 293, § 4. Effective July 2, 2004, the amendment modified the statute to specifically name LLCs and their managers and members, and general and limited partnerships and their general and limited partners, as those entities and individuals who may be held severally liable for any fine, penalty, or imprisonment levied against an employer for the failure to secure workers' compensation insurance. The Derderians contend that passage of this amendment by the Legislature is an implicit admission that the previous version could not be applied to assess an administrative penalty against an LLC, or its managers or members. We find the trial judge's reasoning that the amendment was a clarification of the statute to be more persuasive.

In addressing the effect of a subsequent amendment to a statute, the Rhode Island Supreme Court in Hometown Properties, Inc. v. Fleming, 680 A.2d 56 (R.I. 1996), noted the distinction between clarification of a statute versus alteration.

> "Although it is generally true that, when a statutory provision is amended, the General Assembly is assumed to have intended to accomplish some purpose thereby, such purpose may be the clarification – rather than the alteration – of the original enactment. In particular, the amendment of an ambiguous statutory declaration may be viewed as an attempt to resolve the ambiguity. When a subsequent amendment serves to clarify, rather than to change, an amended statute, the amendment is entitled to great weight in construing the preamendment version of the law."

Id. at 62 (citations omitted). The issue of the liability of the managers of an LLC under R.I.G.L. § 28-36-15 was thrust into public discussion by this highly publicized case involving the Derderians and the unfortunate circumstances which created it. The Legislature promptly responded to clarify any potential ambiguity regarding their intention to hold all business entities and their controlling principals responsible for failure to protect their employees by securing workers' compensation insurance. Considering the timing and circumstances of the passage of

this amendment, we conclude that it was enacted in order to clarify any potential ambiguity in the statute and, as such, it supports the imposition of liability for the administrative penalty against the Derderians.

In the final reason of appeal, the Derderians argue that the trial judge did not have jurisdiction over the Department's appeal from the February 27, 2004 decision of the hearing officer because amendments to R.I.G.L. § 28-36-15, which were enacted in July 2003, eliminated the Director's right of appeal to the WCC. Prior to the effective date of the amendment, July 31, 2003, R.I.G.L. § 28-36-15(b) provided an appeal process from the assessment of a penalty by a hearing officer of the Department:

> "Any party has the right to appeal from any determination or order made under this chapter. Any appeal authorized under this chapter is made to the workers' compensation court in the first instance, and from the workers' compensation court to the supreme court in accordance with § 28-35-30."

This statute was in effect at the time of the first hearing at the Department regarding DERCO's failure to secure workers' compensation coverage on April 1, 2003.

In accordance with this statute, both parties filed petitions with the court appealing portions of the decision rendered on April 9, 2003 by the hearing officer. Judge Morin entered his orders regarding these two (2) petitions on August 4, 2003. His order in W.C.C. No. 2003-03222, the Department's appeal, remanded the matter back to the hearing officer to decide whether the Derderians' status as managers of an LLC was equivalent to a "corporate officer" in R.I.G.L. § 28-36-15.

In the meantime, the Legislature enacted an amendment to R.I.G.L. § 28-36-15 which altered the procedure for actions against employers who did not have workers' compensation insurance. If the Director determined that the noncompliance was unintentional or resulting from

clerical error, and certain other criteria were met, the Director would assess an administrative penalty within certain parameters. Both parties retained the right to appeal that determination to the WCC. In all other cases, the Director must file a petition with the WCC to assess a civil penalty against the employer. Because such an action would be initiated in the WCC, there is obviously no need to provide for an appeal to the WCC in this instance. The Derderians contend that, because of this amendment, the Director was barred from appealing the decision rendered on February 27, 2004 by the hearing officer on remand from the WCC. We find no merit in this argument.

It is clear from reading the amended statute that the Legislature did not intend to eliminate the right to appeal determinations of the Department regarding the assessment of civil fines or penalties. The right to appeal to the WCC is retained in those cases of unintentional noncompliance and noncompliance due to clerical error. Original jurisdiction of all other actions, such as this matter, was transferred to the WCC. These petitions were specifically exempted from the statutory requirement of a pretrial conference, but would otherwise proceed as any other case before the court, including the appellate procedure set forth in R.I.G.L. §§ 28-35-28 and 28-35-29. The amendment simply substituted a different procedure for cases in which the Director determined that the noncompliance was not unintentional or caused by clerical error. The end result, however, is the same as prior to the amendment – the matter will be heard in the WCC.

Despite the different number of the present petition, the case before Judge Rotondi was initiated back in March 2003 with the issuance of the complaint by the Director and then the initial decision of the hearing officer on April 9, 2003. The remand by Judge Morin, and the decision of the hearing officer in accordance with that remand, are part and parcel of the original

proceeding. The language of the amendment to R.I.G.L. § 28-36-15 does not indicate any intent on the part of the Legislature to affect an ongoing proceeding or to completely eliminate the right of the Department or Director to appeal the decision of a hearing officer. Rhode Island General Laws § 43-3-22 provides that "[t]he repeal of any statute shall in no case affect . . . any suit or proceeding had or commenced in any civil case before the time when the repeal takes effect." The proceeding regarding DERCO and the Derderians was commenced well before the amendment to R.I.G.L. § 28-36-15 was enacted and has yet to reach its final conclusion. We find no basis for applying this amendment in such a way so as to alter the process of this action mid-stream. Consequently, we reject the Derderians' assertion that Judge Rotondi lacked jurisdiction over this matter.

Based upon the foregoing discussion, we deny and dismiss the claim of appeal of Michael Derderian and Jeffrey Derderian and affirm the decision and decree of the trial judge. In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Bertness and Sowa, JJ., concur.

ENTER:

_____
Olsson, J.

_____
Bertness, J.

_____
Sowa, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MARVIN PERRY, in his capacity as DIRECTOR OF THE DEPARTMENT OF LABOR AND TRAINING	)	
VS.	)	W.C.C. 2004-01929
DERCO, LLC, and MICHAEL DERDERIAN, and JEFFREY DERDERIAN	)	

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the claim of appeal of the respondents/appellants, and upon consideration thereof, the appeal is denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on August 25, 2004 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

PER ORDER:

_____
John A. Sabatini, Administrator

ENTER:

_____
Olsson, J.

_____
Bertness, J.

_____
Sowa, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Thomas M. Dickinson, Esq., Kathleen M. Hagerty, Attorney-at-Law, and Bernard P. Healy, Esq., on

_____