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COURT OF APPEALS  
STATE OF NEW YORK

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QUINONES GARCIA,

Appellant,

-against-

NO. 26

MONADNOCK CONSTRUCTION,

Respondent.

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20 Eagle Street  
Albany, New York  
April 16, 2026

Before:

CHIEF JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE SHIRLEY TROUTMAN  
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE WILSON: First case on the calendar  
2 is Quinones Garcia v. Monadnock Construction. Counsel.

3 MR. FABIANI: John Fabiani for Appellant. May I  
4 please the Court. In reversing Supreme Court's - - -

5 CHIEF JUDGE WILSON: May I stop you for a second?  
6 Do you - - - would you like to reserve any time for  
7 rebuttal?

8 MR. FABIANI: Five minutes, please.

9 CHIEF JUDGE WILSON: Yes.

10 MR. FABIANI: Thank you. I should have known to  
11 ask for that.

12 CHIEF JUDGE WILSON: That's all right.

13 MR. FABIANI: In - - - in reversing Supreme  
14 Court's grant of the motion to - - - for leave to amend the  
15 answer and for summary judgment on the affirmative defense  
16 of collateral estoppel based on the Workers' Compensation  
17 Board determination that Mr. Quinones Garcia did not suffer  
18 any causally related injury to his neck or his lower back  
19 in the August 2020 accident, the Appellate Division in this  
20 case, and most recently the Appellate Division, Second  
21 Department in the Pacheco case - - -

22 JUDGE TROUTMAN: Do we have a prospective or  
23 retroactive issue here?

24 MR. FABIANI: That's the only issue here is  
25 whether the - - - whether the statute should be applied

1 retroactively.

2 JUDGE TROUTMAN: But is it truly retroactively -  
3 - - application, or is it simply applying it as its - - -  
4 as of its effective date?

5 MR. FABIANI: Well, it's - - - it's retroactive  
6 because it's affecting the substantive rights of the  
7 parties.

8 JUDGE CANNATARO: It's retroactive to what?

9 MR. FABIANI: Retroactive to - - - to the - - -  
10 to - - - to render the determination of the Workers'  
11 Compensation Board in October of 2021, finding that Mr.  
12 Quinones Garcia did not suffer a causally related injury -  
13 - -

14 JUDGE TROUTMAN: But at the time that the  
15 determination was rendered by the Supreme Court, what was  
16 the law? Was that statute in effect?

17 MR. FABIANI: The statute was in effect. The  
18 statute - - -

19 JUDGE TROUTMAN: So why would it not apply?

20 MR. FABIANI: Because the statute applies to  
21 findings of the Workers' Compensation Board. If properly  
22 read, the statute should apply to findings of the Workers'  
23 Compensation - - -

24 JUDGE CANNATARO: Well, that was Judge Troutman's  
25 question, why would it not apply?

1 MR. FABIANI: It would apply to - - -

2 JUDGE CANNATARO: It would. I would think your  
3 answer would be it does.

4 MR. FABIANI: It does apply to decisions made  
5 after the effective date, not to decisions made before the  
6 effective date.

7 JUDGE CANNATARO: And the court considered the  
8 question after the effective date.

9 MR. FABIANI: But it - - - it - - - the court  
10 rendered a determination that had previously been made,  
11 undid a prior determination.

12 JUDGE CANNATARO: So that's your position, that  
13 the retroactivity applies all the way back to when the  
14 decision was made, not when the court is considering the  
15 issue?

16 MR. FABIANI: Well, that's the way the court - -  
17 - that's the way the court applied it, because the court  
18 applied it to a decision that had already been made.

19 JUDGE CANNATARO: The question we're asking is  
20 whether or not that was the right way to apply it. Why  
21 couldn't the court just say, I'm considering this question  
22 today? The - - - the Justice for Injured Workers Act is in  
23 effect. I'm going to apply that law as it exists today.

24 MR. FABIANI: Because I think that the proper  
25 application of the law would be to apply it to decisions of

1 the Workers' Compensation Board. If you read the statute,  
2 it applies to the decisions of the Workers' Compensation  
3 Board made as of that date, not to decisions that have  
4 already been made.

5 JUDGE GARCIA: That's kind of the question,  
6 right? I mean, the effect of the amendment is on the later  
7 proceeding, right?

8 MR. FABIANI: Yes.

9 JUDGE GARCIA: So that in effect - - - one way to  
10 look at that is that that's the hinge date, right? That's  
11 the date we focus on.

12 MR. FABIANI: If we - - - we - - -

13 JUDGE GARCIA: And if - - - well, this is a  
14 different way, I think. If we focus on that as the  
15 decision point, it's not retroactive because you're saying  
16 something that happened in the past has a specific effect  
17 now. And it's the now, when they make that decision in  
18 Supreme Court in this case, that's the date we're looking  
19 at. And one way to look at that then would be there is no  
20 retroactive effect. What would be retroactive is Supreme  
21 Court already decided your case, and then this law became  
22 effective, and then you unwind the decision in this case to  
23 apply the new law. But that's not what happened here.

24 MR. FABIANI: Well, but I think that - - - I  
25 think that the - - - there are two critical dates here.

1 There's the effective date of the statute, and there's the  
2 date that the Workers' Compensation Board made its  
3 determination.

4 JUDGE GARCIA: There's a third date. There's the  
5 date the court made the decision in this case.

6 MR. FABIANI: Right.

7 JUDGE GARCIA: And that, I think you're hearing  
8 is the date that there's interest in.

9 MR. FABIANI: Well - - -

10 JUDGE RIVERA: Well, do you agree that we have a  
11 rule that a court applies the law as it stands at the time  
12 that it renders a decision?

13 MR. FABIANI: Yes.

14 JUDGE RIVERA: Okay. So I think that's part of  
15 this line of questioning. The law was in effect, right?

16 MR. FABIANI: The law was in effect the date - -  
17 -

18 JUDGE SINGAS: When the - - -

19 MR. FABIANI: - - - it made its decision.

20 JUDGE RIVERA: When the court made its decision.  
21 So that's the law it has to apply.

22 MR. FABIANI: Which raises the thorny question of  
23 the motion was made - - - the motion for summary judgment  
24 was made before the - - - before the law went into - - -  
25 before JIWA went into effect. The return - - - the return

1 date was in November of 2022, before the return date - - -  
2 before the - - - the statute went effective. So had the  
3 motion been decided on that day, which it could easily have  
4 been decided on that day, where would we be?

5 JUDGE CANNATARO: What's - - - what's thorny  
6 about that question in terms of whether we view the actual  
7 application of the law having taken place on a date after  
8 it became effective as not being a retroactive application?  
9 What - - - what makes that thorny?

10 MR. FABIANI: Well, because it - - - it - - - the  
11 - - - it was posited that the decision was made after the  
12 statute was enacted. What if the decision had been made  
13 before the statute was enacted?

14 CHIEF JUDGE WILSON: Well, I'm sure there were  
15 lots of decisions like this made before the statute was  
16 enacted, and we know what happened to them.

17 MR. FABIANI: There - - - there were plenty of  
18 decisions made.

19 CHIEF JUDGE WILSON: Yeah.

20 MR. FABIANI: Notwithstanding the fact that the -  
21 - -

22 CHIEF JUDGE WILSON: Well, the statute wasn't - -  
23 -

24 MR. FABIANI: - - - the legislature - - -

25 CHIEF JUDGE WILSON: - - - enforced then, right?

1 MR. FABIANI: The statute was not enforced then.

2 CHIEF JUDGE WILSON: Yeah. So - - -

3 MR. FABIANI: But if the action was not amended,  
4 if the action - - - I'm sorry. If the action had not been  
5 resolved, if the action had not been concluded by the - - -  
6 by - - - and the decision had come down before - - -

7 CHIEF JUDGE WILSON: It would be a different  
8 case.

9 MR. FABIANI: I don't think it would be a  
10 different case because there would be a motion for - - -  
11 there would be a motion to renew based upon a change in the  
12 law. I guarantee - - -

13 JUDGE CANNATARO: So can I ask you this, Mr.  
14 Fabiani?

15 MR. FABIANI: Yes.

16 JUDGE CANNATARO: What would be the harm to your  
17 case, the one that's being argued here today, if we didn't  
18 view this as a retroactive application? If we just viewed  
19 this as a straight application of the law as it existed at  
20 the time the court made its decision.

21 MR. FABIANI: Well, the harm - - - the - - - the  
22 difference to my case would be that the - - - that a right  
23 that - - - that my clients had in October effective - - -

24 JUDGE TROUTMAN: What is that right?

25 MR. FABIANI: That was the right not to be sued a

1 second time for - - - for the - - - for the injury to the  
2 neck and the back. There had been - - - there had been a -  
3 - -

4 JUDGE TROUTMAN: So are you saying they had a  
5 right to have the estoppel effect?

6 MR. FABIANI: Yeah.

7 JUDGE TROUTMAN: That was an established right  
8 you assert they had?

9 MR. FABIANI: Yes.

10 JUDGE TROUTMAN: Based on what?

11 MR. FABIANI: Based upon the prevailing legal  
12 authority at the time. Ryan against New York Telephone and  
13 - - - and the cases that go back more than a hundred years  
14 on the collateral estoppel effect of quasi-judicial  
15 determinations where due process standards are met. And I  
16 think in this case - - -

17 JUDGE TROUTMAN: And are you giving that  
18 recitation based in a situation where a specific statute  
19 has been passed to say that you cannot give retroactive - -  
20 - you can't give collateral estoppel effect anymore?

21 MR. FABIANI: Well, but you - - - that - - -

22 JUDGE TROUTMAN: Does it matter that that statute  
23 was passed?

24 MR. FABIANI: Of course it matters because - - -

25 JUDGE TROUTMAN: And does it matter as to the

1 timing of when it's passed?

2 MR. FABIANI: Yes. I think it - - - I think the  
3 fact that it was passed after the quasi- - - - quasi-  
4 judicial determination was made and after the parties'  
5 rights were fixed.

6 JUDGE TROUTMAN: So your view is, it is the  
7 quasi-judicial determination, not the Supreme Court  
8 rendering its determination, that is the deciding factor?

9 MR. FABIANI: Yes. I think that the - - - yes.

10 JUDGE TROUTMAN: Okay.

11 MR. FABIANI: I think that the - - - that it - -  
12 - that the - - - that the proper interpretation of the  
13 statute, especially since it does not say it shall have  
14 retroactive effect to - - - to quasi-judicial  
15 determinations. The focus of the statute is the decision  
16 of the Workers' Compensation Board, not the personal injury  
17 case. It says that the focus of the statute says that  
18 decisions of the Workers' Compensation Board shall have no  
19 collateral effect, other than as to the determination of  
20 employment as of the date of - - - as of the effective  
21 date. It doesn't say that decisions that were previously  
22 made having the - - - the judicial - - - the quasi-judicial  
23 effect. This is - - - this - - - this is a two-way street.  
24 And - - - and - - - and the - - -

25 JUDGE CANNATARO: I suppose that argument would

1 make more sense to me if the reviewing court were actually  
2 somehow modifying the decision of the - - - of - - - of the  
3 board. But really all they're doing is analyzing it for  
4 whether or not it was correctly decided. And I'm - - - I'm  
5 still not clear on why the court shouldn't apply the law as  
6 they know it exists on the day they answer that question.

7 MR. FABIANI: Well, because I think that the - -  
8 - the - - - the law, the way it should be interpreted, the  
9 way it should be applied, is as to Workers' Compensation  
10 Board decisions made as of - - - on or after the effective  
11 date, not to Workers' Compensation Board decisions that  
12 were made before the effective date of the statute to which  
13 - - - which have fixed the rights of the parties.

14 JUDGE RIVERA: But - - - but what the statute  
15 does is address collateral estoppel. And that can only  
16 happen at the court, right?

17 MR. FABIANI: Yes, that is correct.

18 JUDGE RIVERA: Yeah. So - - -

19 MR. FABIANI: It can only happen at the court.  
20 And it says what - - - what - - - the court shall no longer  
21 give collateral estoppel - - -

22 JUDGE RIVERA: In those judicial proceedings - -  
23 - the law at the time when the court made a decision - - -

24 MR. FABIANI: Right.

25 JUDGE RIVERA: - - - had already - - - the law

1 had already gone into effect?

2 MR. FABIANI: Yes. But I think - - - I think if  
3 we follow the rationale of this court in Regina  
4 Metropolitan, which I - - - I think that the - - - the  
5 Appellate Division in this case, and the Appellate Division  
6 in the - - - in the Pacheco case, which was just recently -  
7 - - the Second Department, which just recently decided,  
8 they gave - - - they went to great lengths to discuss the  
9 rationale of - - - of - - - of the Regina Metropolitan  
10 case. And then sort of without really explaining in a  
11 couple of sentences, they said, never mind, we're going to  
12 - - - we're going to hold that the statute is - - - is  
13 applied retroactively. And I - - - and I think that if you  
14 - - - if - - - if you look at the Regina Metropolitan case  
15 - - - and I realize that two of you dissented in the Regina  
16 Metropolitan case, but I think that - - -

17 CHIEF JUDGE WILSON: We realize we dissented too,  
18 and we lost. We got that.

19 MR. FABIANI: You - - - you did lose. But - - -  
20 and I want to distinguish - - -

21 JUDGE RIVERA: Not such good times.

22 MR. FABIANI: But I do want to distinguish Regina  
23 Metropolitan. In Regina Metropolitan, I think that your  
24 argument or your position that the illegal conduct of the  
25 landlords should not be allowed to be - - - to allow them

1 to profit by virtue of the - - - of the amendment to the  
2 statute.

3 We have an entirely different situation here.  
4 There's no illegal conduct involved. There's no - - -  
5 there's no windfall being affected by - - - by this, as  
6 there would have been in - - -

7 CHIEF JUDGE WILSON: So - - - yeah. As I listen  
8 to you, you're sort of - - - and what this sounds to me a  
9 little like, and stop me if - - - you know, if I'm wrong.

10 MR. FABIANI: Wouldn't stop you.

11 CHIEF JUDGE WILSON: Is this - - - sort of what  
12 you're arguing is that what the Justice for Injured Workers  
13 Act did is something like a claim revival statute where  
14 through collateral estoppel effect, your client had  
15 obtained a right not to be sued, right? Whatever ability  
16 to sue had - - - had been extinguished. And this then  
17 revived that. And so now - - - and we do, I think, look at  
18 claim revival statutes sometimes as - - - under a  
19 retroactivity lens. That's sort of what you're arguing.

20 MR. FABIANI: There's no reason for me to have  
21 stopped you on that because that's exactly right. This - - -  
22 - applied the way the First Department applied it and the  
23 way the Pacheco court applied - - - applied it revives a  
24 claim that didn't exist. That claim was gone. The - - -  
25 the - - - and as - - - as all of the claim revival statutes

1 have - - - have stated, they are clear that they are  
 2 reviving claims that were time barred. Most of the cases  
 3 deal with time barred claims. And I - - - I think that  
 4 that's - - - that's a critical distinction here. That as  
 5 of October 19th, 2021, plaintiff did not have a claim  
 6 against us for an injury to his neck or his lower back and  
 7 then, oof, poof on - - - on - - - in December of 2022, when  
 8 the - - - when the act was - - - was - - - when JIWA was  
 9 passed, if it does apply to undo what had already been  
 10 done, that's what I see as the retroactive effect. Maybe  
 11 I'm missing - - - missing the - - -

12 JUDGE CANNATARO: So I think you might have  
 13 answered this question already, but let me just get it  
 14 straight. What for you is the key retroactivity date? Is  
 15 it the date of the injury or the date of the prior  
 16 determination, or the day the court is looking at the  
 17 question?

18 MR. FABIANI: I think that the statute should  
 19 take effect to apply to all decisions made by the Workers'  
 20 Compensation Board after the effective date. So decisions  
 21 made before the effective date, where parties' rights are  
 22 fixed, should not be affected by this statute. That's our  
 23 - - - that's our entire point.

24 CHIEF JUDGE WILSON: Okay.

25 MR. FABIANI: Thank you.

1 CHIEF JUDGE WILSON: Thank you.

2 MR. WONG: Good afternoon, Your Honors. May it  
3 please the court. It's respectfully submitted that the  
4 JIWA should be retroactively applied.

5 JUDGE TROUTMAN: Is it retroactive or is it  
6 simply a prospective application that had occurred here?

7 MR. WONG: I - - - I - - - I mean, under - - - as  
8 it was applied by the Supreme Court in the initial  
9 instance, it would be retroactive.

10 CHIEF JUDGE WILSON: Why?

11 MR. WONG: However, I - - -

12 CHIEF JUDGE WILSON: Why? Why is that?

13 MR. WONG: Well, because the - - - the court  
14 determined that - - - the Supreme Court determined that  
15 plaintiff was - - - or the defendants were entitled to the  
16 collateral estoppel effect. And that's why we appeal to  
17 the First Department.

18 JUDGE HALLIGAN: But why is that a retroactive  
19 application as opposed to an application as of that date of  
20 the law as it stood on that date?

21 MR. WONG: Yes. I mean, I understand your - - -  
22 what you're saying, and I don't disagree that it wouldn't  
23 necessarily be retroactive. It was, as the law stood on  
24 that day when the court made that decision.

25 JUDGE CANNATARO: That would certainly strengthen

1 your - - - your case, wouldn't it?

2 MR. WONG: Absolutely. Yes.

3 JUDGE SINGAS: But what are you arguing? Are you  
4 - - - are you agreeing with him that we have to look at  
5 this as retroactivity, or are you - - -

6 MR. WONG: I'm not agreeing. I don't think this  
7 has to be looked at as retroactivity. However, I do think  
8 an analysis of the statute requires retroactivity.

9 CHIEF JUDGE WILSON: I'm not sure what that  
10 means.

11 MR. WONG: So if the court were to look at this  
12 under defendant's view that the - - - the date - - - the  
13 actionable date is when the Workers' Compensation made a  
14 decision, then a review of the legislature's bill memo and  
15 language use would require retroactive - - -

16 JUDGE TROUTMAN: Why would - - - why would we  
17 adopt their view? You said if we were to.

18 MR. WONG: Yes. If you were to - - -

19 JUDGE TROUTMAN: What is the correct view - - -  
20 way to - - - is their view that it is the Workers'  
21 Compensation decision that's controlling? Do you agree  
22 with that?

23 MR. WONG: No. I do not agree with that.

24 JUDGE TROUTMAN: What's the controlling - - -

25 MR. WONG: I - - - I would agree with - - - what

1 this Court has indicated so far is the controlling date  
2 should be the date that it - - - the decision was made.

3 CHIEF JUDGE WILSON: I think we just asked  
4 questions so far. We haven't indicated anything.

5 JUDGE CANNATARO: We try not to indicate.

6 MR. WONG: Sure. Yes.

7 JUDGE HALLIGAN: Which - - - which decision? The  
8 Workers' Comp Board decision?

9 MR. WONG: The Supreme Court decision.

10 JUDGE HALLIGAN: Okay. And why is that?

11 MR. WONG: Because - - -

12 JUDGE HALLIGAN: Instead of the date of the  
13 Workers' Comp Board decision, which I think is what the  
14 other side suggests.

15 MR. WONG: Correct. Because the court should  
16 apply the law as it stands when it makes the decision.

17 JUDGE TROUTMAN: And did you not start out with  
18 prospective application as the argument?

19 MR. WONG: That - - - that - - - yes, we did. We  
20 - - - I mean, we just basically said - - -

21 JUDGE TROUTMAN: Have you abandoned that?

22 MR. WONG: I would not say we abandoned it.  
23 However, I - - - we certainly focused on the issue of  
24 whether this should be applied retrospectively based upon  
25 the language of the legislature.

1 JUDGE RIVERA: So it seems, given your answers,  
2 that your position is no, it's not a retroactive  
3 application. But even if the court thought it was a retro  
4 application, it's appropriate in this case?

5 MR. WONG: Yes. That is correct. And just to  
6 clarify why it should be retroactive is, I think based on  
7 the language, it is clearly a remedial statute to deal with  
8 the issues of how the court applied collateral estoppel  
9 throughout legislative history. And specifically, the  
10 legislature has found that the Workers' Compensation Board  
11 decisions do not afford a full and fair opportunity to air  
12 the issue - - - the specific issues as to injury causation.

13 JUDGE CANNATARO: Sticking with your  
14 retroactivity argument - - -

15 MR. WONG: Yes.

16 JUDGE CANNATARO: - - - the one that you made?  
17 It also requires some indication in the text that  
18 retroactivity is - - - is desired by the legislature,  
19 right?

20 MR. WONG: Yes. And this court has determined  
21 that should take effect immediately is sufficient to meet  
22 that.

23 JUDGE CANNATARO: To make it retroactive?

24 MR. WONG: To make it retroactively - - - to make  
25 it retroactive, yes.

1 JUDGE CANNATARO: When did we - - -

2 JUDGE RIVERA: I thought - - - I thought we said  
3 the opposite. In fact, I vaguely remember writing that.

4 MR. WONG: I mean - - -

5 JUDGE RIVERA: Not in a dissent.

6 MR. WONG: I - - - it has - - - it has gone both  
7 ways.

8 JUDGE RIVERA: I'm sorry.

9 MR. WONG: It has gone both ways. I do not have  
10 a case - - -

11 JUDGE GARCIA: I think what we've said is it's  
12 not determinative that there has to be more of an  
13 indication of the intent to apply retroactively than merely  
14 that language, as I recall. And what do you have here?

15 JUDGE CANNATARO: So do you have any other  
16 language besides immediate effect?

17 MR. WONG: Yes. Other than immediate effect - -  
18 - I'm - - - as set forth in the In re Gleason case, it's -  
19 - - the remedial effect, whether the legislature conveyed a  
20 sense of urgency, which we went over. And then whether the  
21 statute was - - -

22 JUDGE CANNATARO: I'm sorry, you did go over  
23 urgency?

24 MR. WONG: Well - - - well, we - - -

25 JUDGE CANNATARO: Where's the urgency?

1 MR. WONG: We just - - - well, the - - - should  
2 take effect immediately - - -

3 JUDGE CANNATARO: Okay.

4 MR. WONG: - - - has been indicated.

5 JUDGE CANNATARO: Okay.

6 MR. WONG: Whether the statute was designed to  
7 remedy an injustice in the law and whether the enactment  
8 reaffirms the legislature's judgment about what the law  
9 should be. And I would - - - I'll just say the last - - -  
10 the very last statement in the bill memo is that this  
11 legislation is needed to ensure that the findings from the  
12 cursory Workers' Compensation Board hearings do not - - -  
13 do not prevent workers from exercising their constitutional  
14 right to a jury trial. And the legislature went into very  
15 specific detail.

16 CHIEF JUDGE WILSON: So which - - - that - - -  
17 which - - - between the second and third factors, which  
18 does that point fit in?

19 MR. WONG: I mean, I would say it does indicate a  
20 sense of urgency, given the significance of the - - -

21 JUDGE RIVERA: It seems they waited a long time  
22 for it to be urgent, right?

23 MR. WONG: Yes. And that - - - that was one of  
24 the - - - one of the factors. However, when looking at the  
25 other factors, I - - - I think it strongly demonstrates a

1 remedy of a - - - of an injustice and you know, an  
2 important injustice. The - - - the legislature mentions  
3 it's the plaintiff's constitutional right to a jury trial.

4 And they go into great detail as into why the  
5 Workers' Compensation Board determinations are not  
6 sufficient insofar as that these hearings sacrifice basic  
7 procedures, evidentiary rules, they don't address fault,  
8 allow parties to take depositions, provide ways for  
9 witnesses to testify, allow for the exchange of documents  
10 or tests. Hearsay evidence is allowed, and witnesses have  
11 strict time limits in which to provide testimony. A jury  
12 trial, however, would properly allow a plaintiff to address  
13 all of these issues and fully air and litigate them.

14 So therefore, it's respectfully submitted that  
15 should this court find that the determinative date was the  
16 date of the - - - the Workers' Compensation Board decision,  
17 that this statute should be applied retroactively for those  
18 reasons. Thank you.

19 CHIEF JUDGE WILSON: Thank you.

20 MR. FABIANI: It is not, and it never has been,  
21 our position that all determinations by the Workers'  
22 Compensation Board are entitled to quasi-judicial effect,  
23 as it is not the law in this state that all quasi-judicial  
24 determinations are entitled to collateral estoppel effect.  
25 Only those that satisfy due process requirements. The bill

1 memo talks about slapdash proceedings. That is not what we  
2 have here. We have a full record where all the  
3 constitutional safeguards that warrant application of - - -  
4 of a collateral effect to a quasi-judicial determination  
5 were made here. Representation by counsel, by the same  
6 counsel that is representing Mr. Quinones Garcia in this  
7 case.

8 CHIEF JUDGE WILSON: How does - - - how does that  
9 affect - - -

10 MR. FABIANI: Witnesses were called - - -

11 CHIEF JUDGE WILSON: How does that affect our  
12 analysis here? Because let's say in this case, this is  
13 even better procedurally than a jury trial would have been.  
14 How does that affect the decision we have to make today?

15 MR. FABIANI: It's a detour. It really does not  
16 affect the decision that you have to make today. But it's  
17 a detour because I - - - I know that - - - it - - - that's  
18 raised because so much of the respondent's argument is  
19 predicated upon the bill memo and the sense of urgency  
20 which they waited, what, 36 years or 33 years? That's how  
21 urgent it was.

22 And - - - and - - - and this Court in the Regina  
23 case said that when viewing a statute that affects existing  
24 substantive rights, the court must be very, very careful,  
25 because as political whims come and go, parties' rights can



1 be affected. And it - - - it - - - and - - - and it should  
2 be done very, very cautiously and very, very rarely, where  
3 - - - where there are substantive rights that are being  
4 affected by a statute to - - -

5 CHIEF JUDGE WILSON: And you view the right that  
6 you had as a substantive right, not a procedural right?

7 MR. FABIANI: Excuse me?

8 CHIEF JUDGE WILSON: The right that you had,  
9 which I gather is the right not to be sued because - - -  
10 essentially, to use the collateral estoppel effect of the -  
11 - -

12 MR. FABIANI: Yes.

13 CHIEF JUDGE WILSON: Right. You view that as a  
14 substantive right, not a procedural right?

15 MR. FABIANI: Yes. I do view it as a substantive  
16 right. So unless this panel has any more questions for me,  
17 I thank you for your attention.

18 CHIEF JUDGE WILSON: Thank you.

19 (Court is adjourned)

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C E R T I F I C A T I O N

I, Bobby Hodges, certify that the foregoing transcript of proceedings in the Court of Appeals of Quinones Garcia v. Monadnock Construction, No. 26 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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