LAVINE, J., dissenting. I respectfully dissent from the majority opinion, which concludes that the workers' compensation review board properly dismissed the appeal of the second injury fund (fund). Until the workers' compensation commissioner (commissioner) ordered the fund to pay the plaintiff, Lovie Dechio, the fund was not aggrieved, and there was no final judgment from which it could appeal. In other words, because the fund was under no obligation to pay the plaintiff until ordered to do so, there was no reason, or necessity, for the fund to file an appeal until the supplemental order was issued. The fact that the fund had reason to expect that such an order would be issued does not change my conclusion.

The following details of the procedural history are relevant to the fund's appeal. On September 30, 2005, the commissioner issued a finding and award in which he found, among other things, that the defendant Raymark Industries, Inc. (Raymark), had not paid the plaintiff, as it had filed numerous petitions in bankruptcy. The commissioner also found that Raymark "continues to be in a bankruptcy mode and continues to be in business, making huge profits." The plaintiff was granted relief from the bankruptcy stay to pursue a claim against the fund. Later, the fund was impleaded over its objection.[1] The commissioner paraphrased General Statutes § 31-355, stating that "prior to an entry of an award against the [fund], an order first must be issued against the uninsured employer." The commissioner found that § 31-355 "does not apply in this matter. The undersigned [commissioner] is precluded from issuing an award against the [fund] because an order must first issue against the [employer] of record. An order cannot issue against the [employer] because of its bankruptcy status. . . . Once [Raymark] is out of bankruptcy or if a relief from stay is issued directly against it, the undersigned will then entertain any motions or requests for orders against it prior to any order under . . . [§] 31-355." The commissioner found the compensation rate to be $224.93 and stated that "[t]he matter shall remain open subject to future hearings at the request of the parties . . . ."

On September 29, 2006, the commissioner issued another finding and award in which he ordered Raymark to pay all benefits noted in the October 3, 2005 finding and award. The commissioner also stated: "In the event that [Raymark] fails to pay this claim within [twenty] days, counsel for the [plaintiff] is to contact [the commissioner's] office so that a supplemental finding and award can be issued against the [fund] pursuant to . . . [§] 31-355."

I agree with the majority that the resolution of the

fund's appeal turns on the construction of § 31-355. Our workers' compensation scheme is in derogation of the common law; see *Willoughby* v. *New Haven*, 123 Conn. 446, 454, 197 A. 85 (1937) ("the operation of a statute in derogation of the common law is to be limited to matters clearly brought within its scope"); and the workers' compensation commission must act strictly within its authority. *Nationwide Mutual Ins. Co.* v. *Allen*, 83 Conn. App. 526, 532, 850 A.2d 1047, cert. denied, 271 Conn. 907, 859 A.2d 562 (2004). General Statutes § 31-355 (b) provides in relevant part that "[w]hen an award of compensation has been made under the provisions of this chapter against an employer who fail[s] . . . or is unable to pay . . . and whose insurer fail[s] . . . or is unable to pay . . . such compensation shall be paid from the Second Injury Fund. The commissioner, on a *finding of failure or inability to pay* compensation, shall give notice to the Treasurer of the award, directing the Treasurer to make payment from the fund. . . ." (Emphasis added.)

The question is whether the fund was aggrieved by the commissioner's finding and award dated September 29, 2006, when the commissioner ordered Raymark to pay the plaintiff the benefits the commissioner found that she was due. "To be entitled to invoke the judicial process, a party must have suffered an aggrievement." *Kelly* v. *Dearington*, 23 Conn. App. 657, 660, 583 A.2d 937 (1990). The fund was not aggrieved by the September 29, 2006 finding and award. Requiring the fund to pay the plaintiff was contingent on Raymark's failing to pay and the commissioner's issuing a supplemental order. In fact, the commissioner ordered the plaintiff to return for a supplemental order if she was not paid. Raymark's failure to pay was a condition precedent to the fund's being ordered to pay. The commissioner's ruling on the request for a supplemental order could not be ministerial because the commissioner was required to make a finding as to whether Raymark had paid the plaintiff before he could issue a supplemental order.

Hummel v. *Marten Transport, Ltd.*, 282 Conn. 477, 923 A.2d 657 (2007), provides guidance to the resolution of the issue in this case. *Hummel* concerns the application of the final judgment rule to appeals from the board under General Statutes § 31-301b. *Hummel* v. *Marten Transport, Ltd.*, supra, 479. General Statutes § 31-301b provides that "[a]ny party aggrieved by the decision of the Compensation Review Board upon any question or questions of law arising in the proceedings may appeal the decision of the Compensation Review Board to the Appellate Court." Our Supreme Court stated that "the Appellate Court's review of disputed claims of law and fact ordinarily must await the rendering of a final judgment by the [board]. . . . When the board remands a case to the commissioner for further proceedings in connection with the challenged award, the finality of

the board's decision is called into question . . . . In such circumstances, [t]he test that determines whether such a decision is a final judgment turns on the scope of the proceedings on remand: if such further proceedings are merely ministerial, the decision is an appealable final judgment, but if further proceedings will require the exercise of independent judgment or discretion and *the taking of additional evidence*, the appeal is premature and must be dismissed. . . . Finally, because the existence of a final judgment is a jurisdictional prerequisite to an appeal, the reviewing court may dismiss the case on that ground even if the issue was not raised by the parties." (Citations omitted; emphasis added; internal quotation marks omitted.) *Hummel* v. *Marten Transport, Ltd.*, supra, 485.

Our Supreme Court "first imported a final judgment requirement into § 31-301b in *Matey* v. *Estate of Dember*, 210 Conn. 626, 556 A.2d 599 (1989). In *Matey*, the [fund] appealed from a decision of the compensation review [board], which affirmed the finding of the commissioner as to the fund's liability to the claimant but remanded the case for further proceedings before the commissioner with respect to the amount of the award. . . . Although the claimant had not challenged the appealability of the board's decision, [our Supreme Court] followed the holding of [*Respasi* v. *Jenkins Bros.*, 16 Conn. App. 121, 546 A.2d 965, cert. denied, 209 Conn. 817, 550 A.2d 1085 (1988)], in concluding, first that only a final judgment is appealable under § 31-301b, and, second, that the fund's appeal was premature in light of the board's remand order directing the commissioner to conduct a further evidentiary hearing for the purpose of determining the correct amount of the award." (Citation omitted.) *Hummel* v. *Marten Transport, Ltd.*, supra, 282 Conn. 491–92.

The case here is procedurally distinct from *Hummel* as it does not concern a remand from the board to the commissioner. Nonetheless, the majority resolves the propriety of the board's dismissing the fund's appeal by concluding that the commissioner's supplemental order was merely ministerial. I respectfully disagree. When deciding whether to issue a supplemental order as to the fund, the commissioner necessarily had to consider evidence as to whether Raymark, or its insurers, had paid the plaintiff benefits. The supplemental order was contingent on the completion of the following requirements pursuant to § 31-355: "(1) the substantive and procedural requirements of the act have been met; (2) the award against the employer has been entered; and (3) *the employer and its insurer have failed to pay*." (Emphasis added.) *Matey* v. *Estate of Dember*, 256 Conn. 456, 487–88, 774 A.2d 113 (2001) (*Matey II*). Implicitly and necessarily, the commissioner had to find that Raymark and its insurers had not paid the plaintiff within twenty days, as ordered, before the commissioner could issue the supplemental order. That finding

required the taking of additional evidence, however slight. I simply do not agree that the commissioner's issuance of the supplemental order is "akin to the application of a simple mathematical formula," as the majority concludes.

Although the board here relied on *Matey II* to support its decision to dismiss the fund's appeal, that case actually supports the fund's position with respect to the timeliness issue. In *Matey II*, "the plaintiff repeatedly argued that the fund was barred from raising the jurisdictional claim on appeal to the board because it had not done so within [the appeal period] after the October 2, 1990 finding and award. *That award, however, was not directed against the fund, but against Dember's estate.* An order against the fund was not entered until February 25, 1991, when the fund filed a timely motion to open." (Emphasis added.) *Matey* v. *Estate of Dember*, supra, 256 Conn. 474; see also *Coley* v. *Camden Associates, Inc.*, 243 Conn. 311, 314 n.4, 702 A.2d 1180 (1997) ("[t]he decision from which the fund appeals is separate and independent from the appeal to the board by the employer and the insurer"). The portion of *Matey II* on which the board relied, *Matey* v. *Estate of Dember*, supra, 488–94; concerns the merits of the fund's appeal in that case. It does not apply to the question of whether the appeal was timely.

I concur with the majority's assertion that the Workers' Compensation Act, General Statutes § 31-275 et seq., "is a remedial statute that should be construed generously to accomplish its purpose." *Deschenes* v. *Transco, Inc.*, 288 Conn. 303, 314, 953 A.2d 13 (2008). The remedial nature of the statute, however, does not provide a basis for deciding this case. The commissioner's finding and award of September 29, 2006, gave Raymark, or its insurers, twenty days in which to pay the plaintiff benefits. If the benefits were not paid, the plaintiff could return to the commissioner to request a supplemental award. Twenty days is the same period of time in which the fund could appeal. See General Statutes § 31-301. The fund could not be expected to know whether Raymark would pay within the twenty days. After all, the commissioner found that Raymark was still in business and making "huge" profits.

For the foregoing reasons, I respectfully dissent.

[1] The commissioner found that the fund objected to being made a party to the plaintiff's claim "contending, among other things, that there was insurance coverage in place and that . . . General Statutes [§] 31-355 does not apply. It further contends that the June 24, 1988 finding and award was not proper."