

Control of Damages through the Statutory Employer Doctrine

The Workers' Compensation Act ("Act") can actually be used as a very effective affirmative defense against tort liability. It's very common for an employer or insurance company to deny a workers' compensation claim on the basis that the injured worker is not an employee. So common, that in Pennsylvania, you only need to check a box on the denial form. But there are times that an employer, and its insurer, can drastically limit exposure by arguing that the injured worker is an employee.

Under the statutory employer provision of the Workers' Compensation Act, a general contractor is liable under the Act for all individuals on the work premise. These include subcontractors and the employees of the subcontractors. If the general contractor has the sole contract with the premise owner, than all individuals working under that contract, and all subcontracts, are considered "employees" for purposes of the Act.

The general contractor could be held responsible for lost wages and medical bills, but where there are allegations that the general contractor's negligence led to a worker being injured, this statutory employer designation is critical in limiting damages. Without it, tort liability for the general contractor possibly includes punitive damages and pain and suffering, damages that can easily be exponentially greater than the lost wages and medical bills associated with an injury.

The Supreme Court of Pennsylvania recently upheld the long standing statutory employer provision of the Act and reiterated that an individual injured while present on a premise as a result of the general contractors relationship with the premise owner is an "employee." With that designation, the general contractor is afforded the immunity from tort liability included in the Act. In other words, the employer is immune from tort liability regardless of the employer's negligence. Even in situations where the injured worker's workers' compensation claim is barred based on other defenses, the tort immunity still applies. For example, the Act requires an injured worker to give notice of his or her injury within 120 days; however, the statute of limitations on a negligence action is two years. In a circumstance where a general contractor's first notice of injury is a negligence lawsuit brought just before the two-year statute of limitations, the injured worker's negligence suit would be barred by the Act's grant of immunity, and any claim for workers' compensation benefits would be barred by the 120-day notice provision. The general contractor would avoid all liability associated with the injury.

In the workers' compensation arena, it seems very counterintuitive for an employer to be arguing that the injured worker is an employee, and just as odd for an injured worker to be arguing that he or she was not an employee. But by looking at the bigger picture, a contractor can avoid paying the exponentially higher tort related damages by seeking cover under Pennsylvania's Workers' Compensation Act.

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