

Can a Restaurant-Franchisor Be Liable for the Payment of Workers' Compensation to the Injured Worker of a Franchisee Location as a Statutory Employer?

The Supreme Court of Pennsylvania granted allowance to hear the appeal of the Uninsured Employers Guaranty Fund in *Saladworks, LLC v. W.C.A.B. (Gaudio & Uninsured Empls. Guar. Fund)* on May 3. The specific issue to be addressed by the Supreme Court is whether a franchisor may be subject to liability as a statutory employer under Section 302(a) of the Workers' Compensation Act (WCA).

Pursuant to Section 302(a) of the WCA, a "contractor" may bear secondary liability for compensation to an injured worker employed by his or her "subcontractors." Persons or entities, contracting with others to perform work which is "a regular or recurrent part of the business, occupation, profession or trade" of that "contractor," can be held liable, to assure that the employees of the uninsured "subcontractor" are covered by workers' compensation insurance.

Although liability as a statutory employer arises frequently in the context of construction, Pennsylvania courts have extended liability to persons or entities other than those we typically think of as a general contractor responsible for a job site. For example, in *Six L's Packing Co. v. W.C.A.B. (Williamson)*, 44 A.3d 1148 (Pa. 2012), the Supreme Court affirmed the Commonwealth Court's extension of statutory employer status to a produce company that had hired a transit company to transport its tomatoes during which transport a driver was injured.

In *Gaudio*, the Commonwealth Court addressed the question of whether a restaurant franchisor, Saladworks, LLC, was a statutory employer under section 302(a) of the WCA, where the worker had been injured while working for a franchisee location. The *Gaudio* court declined to extend liability in this circumstance, instead concluding that Saladworks was in the business of selling franchises using its unique system, as opposed to being in the restaurant business or the business of selling salads or other food products. Without the franchisee being engaged in the "regular or recurrent part of the business, occupation, profession or trade" of Saladworks, LLC, the *Gaudio* court declined to extend liability to the restaurant franchisor. However, the Commonwealth Court explicitly stated that cases involving franchisors and franchisees must be analyzed on a case-by-case basis under Section 302(a). The suggestion being, the analysis could change with respect to franchises outside of the restaurant industry.

Comment: The Supreme Court granted allocatur in a case which can have a tremendous impact upon franchisors and their insurers. It may reverse the Commonwealth Court rejecting Saladworks, LLC's position that it is in the separate business of selling franchise licenses. Opening up restaurant franchisors, or franchisors in general, to workers' compensation liability as statutory employers towards the injured employees of franchisees could greatly increase costs of insurance and business operations. All concerned parties should stay tuned and hope the Supreme Court's decision provides practical guidance, as opposed to a "case-by-case" analysis.