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Gallagher Sharp Shop Talk: Workers' Compensation

QUESTION: Are subcontractors enrolled in a self-insured construction project pursuant to R.C. 4123.35(O) immune from a negligence suit by an employee of another subcontractor working on the same job?

Ohio law provides that a general contractor on large construction projects can seek to “self-insure” the project for workers' compensation purposes, thus providing workers' compensation coverage for its own employees and the employees of other enrolled subcontractors working on the project. This provision, R.C. 4123.35(O), applies only to large projects (\$100 million in estimated costs) which will be completed within 6 years. If a general contractor seeks to self-insure, it receives the same benefits as those of other self-insured employers, including immunity from suit from its own employees and from the employees of sub-contractors injured while working on the project. Recently, the Supreme Court of Ohio was presented with a certified question of law from the United States District Court for the Western District of Ohio concerning whether this immunity extends to subcontractors?

Stoltz v. J&B Steel Erectors, 136 Ohio St.3d 281, 2016-Ohio-1567, involved an employee of a subcontractor who was injured at the Horseshoe Casino construction project in Cincinnati. The employee sought and received workers' compensation benefits, then brought suit against the general contractor and several other subcontractors (but not his employer) alleging negligence. The general contractor and subcontractors moved for summary judgment, alleging they were immune from suit under Ohio's workers' compensation laws, namely R.C. 4123.35 and 4123.74. The trial court granted summary judgment to the general contractor, but denied summary judgment motions filed by the subcontractors, finding that the subcontractors were immune from suit only as to their own employees and not from employees of other enrolled contractors. The subcontractors moved the federal court to certify the following question of law to the Supreme Court of Ohio:

“Whether R.C. 4123.35 and 4123.74 provide immunity to subcontractors....from tort claims made by employees of [other] enrolled subcontractors injured while working on the self-insured project?”

The Supreme Court accepted the question answered in the affirmative, finding that the statute (R.C. 4123.35(O)) provided the same immunity to subcontractors that are enjoyed by the general contractor. The Court first noted that in interpreting statutes, words and phrases shall be construed and given their unambiguous meaning. The problem in this case was that the statute as written contained apostrophes in the phrase “contractor’s or subcontractor’s employees” in defining who is entitled to immunity. The claimant argued that the placement of these apostrophes meant that the statute meant to grant immunity to subcontractors only as to suits brought by their own employees. However, this interpretation ignores the language of the statute, which effectively grants the employees of subcontractor’s status as employees of the general contractor for workers' compensation purposes. The “legal fiction” created by the General Assembly makes clear that for purposes of this statute, the subcontractors do not have employees

working on the job site. Accordingly, these subcontractors cannot be vicariously liable for injuries caused by their employees, and lawsuits arising from injuries caused by the negligence of co-employees are also barred by statute. Therefore, the subcontractor cannot be sued for the negligent acts of its employee which causes injury to an employee of another subcontractor. In a dissent, Justices French and Pfeifer argue that an employee of a subcontractor injured on a job site always had the right to sue another contractor, and the “legal fiction” created by R.C. 4123.35(O) did nothing to abrogate that right.

Stolz is an excellent example of adopting a reading of a statute that furthers the intent of the parties and the General Assembly.

If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers’ compensation issues, please feel free to contact me.

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