



Court: General Contractor Not Liable for Injuries to Employees of Sub

Client Advisories

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Construction jobs involve multiple parties that an injured worker (or his attorney) will look to recover from after suffering an injury. When the worker is an employee of a subcontractor, he cannot directly sue his employer because of New Jersey's worker compensation laws. Such workers, therefore, often target the general contractor. In a recent New Jersey decision, however, the court held that under the circumstances of that case, the general contractor had no duty of care to the injured employee of a subcontractor. [*Tarabokia v. Structure Tone*, A-3822-11](#).

In *Tarabokia*, the general contractor (GC) was responsible for overall safety of the worksite pursuant to its contract with the property owner. The GC hired an electrical subcontractor (Sub) to perform the electrical work pursuant to a series of purchase orders. However, the GC and the Sub did not enter into a written contract. The purchase orders also did not contain any terms regarding the distribution of safety responsibilities. The Sub did provide the plaintiff worker with training on the proper use of tools and also required that he attend weekly safety meetings. The plaintiff was required to use a power tool supplied by the Sub that set anchors into a concrete ceiling. However, contrary to his training, the plaintiff did not wear anti-vibration gloves while operating the tool. After a month, he experienced wrist pain and ultimately suffered nerve damage in his wrists and arms and was unable to work.

The court found the GC did not have a duty of care to the plaintiff under these circumstances. The court focused on the following facts in reaching its decision: (1) there was no contract between the GC and Sub that required the GC to assume any safety obligations for the Sub's employees; (2) the GC was not aware plaintiff was using the tool at issue or of the precise danger posed by the improper use of the tool; (3) the GC did not contribute to the dangerous condition that caused plaintiff's injury; (4) the danger posed by the tool was not readily apparent to the GC; and (5) it was the Sub, not the GC, that assumed control over the means and methods of plaintiff's work. The takeaway from this case is that a GC is not always responsible for injuries to employees of a Sub simply because it happens to be the GC. If the injuries are not clearly foreseeable and if the GC does not have a contractual relationship with the Sub that provides direct supervisory authority over construction equipment,

and if the GC is otherwise unaware of the dangerous condition at issue, it may be able to escape liability, as was the case in *Tarabokia*.

If you have any questions about this Advisory or other legal matter, please contact Douglas Diaz, Esquire, at (856) 795-2121, or any member of Archer's Labor and Employment or Construction Litigation Departments in Haddonfield, N.J., at (856) 795-2121, in Philadelphia, Pa., at (215) 963-3300, or in Hackensack, N.J., at (201) 342-6000.

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