

legal

Case a Primer in Workers' Compensation

BY MARK A. KABLACK

A recent Massachusetts Superior Court case, *Larson v. Fred Salvucci Corp. et al.* (2004), provides an important reminder to general



contractors about the basics of workers' compensation benefits and the pitfalls of not properly policing the insurance requirements of subcontractors.

In today's world, it is a given that paperwork and other administrative tasks are increasingly cumbersome and often detract from the real work at hand. However, *Larson* demonstrates that inattentiveness to such details can be a shortsighted mistake.

Under the Workers' Compensation Act, M.G.L. c. 152, Section 18, a general contractor is liable to pay compensation benefits of a subcontractor's employees when the subcontractor itself is uninsured. Such liability is driven by statute and is not voluntary. When compensation is paid under these circumstances, a general contractor may seek indemnity from the uninsured subcontractor and recover those benefits that should have been paid by the subcontractor directly. Let us consider this principle No. 1 for purposes of this article.

Principle No. 2 concerns another important aspect of the Workers Compensation Act. When an employee files any

claim under the act or accepts payment of compensation on account of personal injury covered by the act, such action shall constitute a release of the insured from all claims or demands at common law. This principle provides obvious public benefits such as certainty, efficiency and finality to work-related injuries.

Both of these principles are at the crux of the *Larson* case. In *Larson*, the defendant, Salvucci Corp., served as a general contractor for work at a construction site in Billerica. In accordance with its contract provisions, Salvucci Corp. entered into a subcontract for masonry work to be performed by a company called Great Eastern. In the conduct of the subcontract work, an employee from Great Eastern fell roughly 40 feet from scaffolding at the work site and suffered substantial injuries. The employee sought benefits under the act from Great Eastern, which did not have workers' compensation insurance. In the alternative, the employee sought benefits from Salvucci Corp., whose insurer made payments as required by Section 18 of the act. The employee then sought common-law damages for negligence against Great Eastern and Salvucci Corp., among others, seeking additional compensation.

In response to the common law claims, Salvucci Corp. moved for summary judgment, arguing first that as a general contractor it had paid benefits to an injured employee of a subcontractor in accordance with the act, Section

18 (principle No. 1). Salvucci Corp. argued second that common-law claims against it by the employee should be barred based upon the release provisions of Section 23 (principle No. 2). Unfortunately for general contractors throughout Massachusetts, Judge Ralph D. Gants disagreed with Salvucci's argument and denied the motion for summary judgment.

Five Reasons

According to Gants, there were as many as five reasons why Salvucci Corp. should be subject to both workers' compensation payments as well as common-law claims for negligence. First, Gants ruled that Salvucci Corp. was insured under the act only with respect to its employees, not with respect to the employees of its subcontractor. The judge ruled that compensation payments made by Salvucci were required as a matter of statute. There was no voluntary effort by Salvucci to provide workers' compensation insurance to the employees of its subcontractors under a special employee agreement, joint-venture agreement, cost-sharing agreement or otherwise. The only reason why Salvucci paid any workers' compensation benefits was because it failed to ensure that its subcontractor (Great Eastern) carried the requisite insurance.

Second, Gants interpreted the definition of "employee" strictly. He found that there was no dispute that the injured worker was "in the service of [Great Eastern] under a contract for

hire.” According to Gants, an insured employer is released from further liability under Section 23 when it pays workers’ compensation benefits to its own employees, not when a general contractor pays benefits to a subcontractor’s employee.

Third, the judge found that additional common-law claims against Salvucci Corp. were consistent with other aspects of the act. Section 23, for instance, specifically provides for common-law remedies for “employees against persons other than their employer.” While the act provides certainty, efficiency and finality to claims for injury against an employer, it does not preclude other claims at common law. Obviously, the Legislature recognized that there are additional public purposes to be served by common-law claims against other parties (different than the employer) who have committed acts of negligence.

Fourth, Gants found that ruling against Salvucci Corp. was consistent with other prevailing case law. While there was no case in Massachusetts directly on point, cases within the last few

decades have consistently eroded the “common employment” doctrine. These cases make clear that only the direct employer of an employee is released from common-law liability under Section 23.

Fifth, and perhaps most telling, Gants found that his ruling was consistent with the broad legislative purpose of the act, which is to protect injured employees. Citing to Massachusetts Appellate Court’s Hepner case (1990), the Larson decision reiterates the overarching principle that “[t]he Workers’ Compensation Act is to be construed liberally for the protection of an injured employee.” The judge also recognized that ruling against Salvucci Corp. would send a message to all general contractors that there is a price to pay when you fail to insist upon requisite insurance from subcontractors. In essence it provides incentive to general contractors to police the subcontractor field. The legal ramifications of Larson seek to neutralize any competitive advantage that a loosely run, underinsured subcontractor may have on pricing for a given project.

Lastly, in what appears to be a secondary consideration, Gants opines that the ruling against Salvucci Corp. is not unfairly burdensome on general contractors, as a general contractor can still seek reimbursement from the subcontractor under Sections 15 and 18 of the act. Such a rationalization ignores the burden shift to general contractors and their insurers who now have to commence a lawsuit to seek such remedies. The rationalization also ignores the potential hollow result of winning a damage claim against a subcontractor who is insolvent.

The Larson case is a reminder to all general contractors that they need to continue to be rigorous in their review of subcontractor credentials. It is another example of how short-circuited administration of subcontractors may make sense today but may cause costly problems tomorrow. ◆

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