

Washington Appellate Court Limits Liability for Personal Injury Claims Brought by Contractor's Employee Against Landowners

Toxic Tort and Environmental Law Update

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The Washington State Court of Appeals affirmed a summary judgment dismissal of a lawsuit filed by a landowner's contractor's employee for personal injuries that the plaintiff allegedly sustained while working on a construction site owned by the landowner. Citing Restatement (Second) of Torts §414 comment c, the court in *Hymas v. UAP Distribution, Inc.*, 272 P.3d 889, Div. 3, March 08, 2012, held that a landowner could be liable for the injuries of contractors' employees performing work on the landowner's premise, but only if the landowner retained "at least some degree of control over the manner in which the work was done." The court restated the general rule that whether the right to control has been retained depends on the parties' contract, the parties' conduct, "and other relevant factors." The court held that this same standard of "retained control" applies to claims for violations of state worker safety laws and regulations. In this case, the court found that the landowner had not retained control over the worksite, and thus, could not be liable for injuries sustained by its contractor's employees caused by violations in state worker safety laws.

The court recognized that the parties' contract contained several provisions that explicitly provided "sole responsibility...and control over construction means, methods, techniques, sequences and procedures" to the contractor. Additionally, the contract provided that the contractor was "responsible for initiating, maintaining and supervising all safety precautions and programs," and that the contractor shall comply with "all applicable safety laws and regulations." While the contractor argued that these provisions evidence the parties' intent that the contractor would be responsible for all issues regarding workplace safety, the employee argued that requiring the contractor to comply with the Washington safety laws

and regulations amounted to “control” over the contractor’s work. The court disagreed with the employee, and found that because the landowner “does not dictate the contents” of the state work safety regulations, but merely requires the contractor to comply with independently existing law that would otherwise be applicable to the contractor, the contract’s requirements of compliance with applicable law is not evidence of retention of control by the landowner over the methods of operation.

The court also found that the landowner’s occasional inspections of the contractor’s work, when performed to ensure timely completion of the contract, were not sufficient to trigger liability for violations of workplace safety regulations. Moreover, the court held that retention of the right to order the work stopped or resumed, to make suggestions or recommendations that need not necessarily be followed, or to prescribe alterations and deviations were not sufficient to amount to “control” over the workplace.

Finally, the court held that the landowners’ “resemblance to a general contractor is, at best, only one piece of evidence bearing on whether it could or would have elected to retain control.” Here, the employee argued that the landowner acted as a general contractor because it did not hire a general contractor, but hired a series of contractors to complete the project. The court rejected this argument, and held that Washington law does not necessarily distinguish between a landowner or general contractor when making a determination of whether there is sufficient “retained control” to impose liability for workplace injuries.

The court also distinguished *Arnold v. Saberhagen Holdings, Inc.*, 157 Wn. App. 649, 240 P.3d 162 (2010), which found sufficient evidence of control for “take home exposure” cases involving family members of shipyard workers who were allegedly exposed to asbestos from Lockheed Shipbuilding Company. The court found that, unlike the landowner in *Hymas*, evidence in *Arnold* indicated that Lockheed supervisors were onsite daily, provided the

asbestos-containing insulation, and retained not only actual control over safety, but also the contractual right of control.

The *Hymas* decision offers an example of how landowners can avoid premises liability by ensuring their contractors retain control over the workplace safety of their employees.

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