

Pennsylvania Supreme Court Reaffirms Validity of Statutory Employer Defense

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By: Michelle D. Coburn and Michael W. Jervis

In *Patton v. Worthington Associates, Inc.*, the Pennsylvania Supreme Court reaffirmed the continuing validity of the longstanding statutory employer doctrine and related five-part test of *McDonald v. Levinson Steel Co.* In doing so, the court overruled the Superior Court and held that Worthington was immune from tort liability as the statutory employer of plaintiff Earl Patton.

Worthington was the general contractor for a project to construct an addition to a church. Worthington subcontracted with Patton Construction, Inc. to perform carpentry work. Earl Patton was an employee and the sole owner of Patton Construction, Inc. He was injured in a scissor lift accident while performing work on the church. Patton sued Worthington alleging failure to maintain safe conditions at the worksite. After a trial, a jury awarded Patton and his wife a little more than \$1.5 million in damages.

Before trial, Worthington had moved for summary judgment arguing that it was Patton's statutory employer and thus immune from tort liability under Pennsylvania's Workers' Compensation Act. Under that law, general contractors are secondarily liable for payment of workers' compensation benefits to employees of subcontractors. Like traditional employers, statutory employers are immune from tort liability for work-related injuries in situations where they are secondarily liable for workers' compensation payments.

Generally, to determine whether or not a defendant qualifies as a statutory employer, courts apply the five requirements of *McDonald v. Levinson Steel*, a 1930 Pennsylvania Supreme Court case. Both parties and the trial court agreed that Worthington met that test. However, the trial court concluded that as a threshold matter, it first had to be determined whether Patton was an independent contractor or an employee with respect to Worthington before the statutory employer issue could be addressed. Worthington's motion for summary judgment was thus denied as the court found there was a jury issue with regards to whether or not Patton was an independent contractor. The trial court then submitted that issue to the jury in an interrogatory, which determined that Patton was an independent contractor. Therefore, the statutory employer immunity was deemed inapplicable and judgment was entered against Worthington. The Superior Court affirmed the verdict, holding that the trial court had taken the correct approach in submitting to the jury the question of whether or not Patton was an independent contractor.

The Supreme Court strongly criticized the trial court and Superior Court for ignoring "longstanding jurisprudence maintaining that conventional subcontract scenarios serve as paradigm instances in which the statutory-employment concept applies." The Supreme Court noted that the trial court first erred in telling the jury it must find that Earl Patton was either an employee or independent contractor of Worthington, when in fact he was clearly an employee of Patton Construction, Inc. The trial court then compounded this error by ignoring the fact that "independent contractor" is

defined differently under the Workers' Compensation Act than under common law.

Instead, the Supreme Court emphasized the long-established rule that a conventional general contractor-subcontractor relationship implicates the statutory employer concept with respect to the subcontractor's employees. In that context, the phrase "independent contractor" refers only to contractors that do not have a derivative relationship with the general contractor (i.e. excluding subcontractors).

As a result, the Supreme Court held as a matter of law that Worthington was Patton's statutory employer, because Patton Construction, Inc. and Worthington had the kind of traditional contractor-subcontractor relationship which had long been recognized as giving rise to statutory employer status. Therefore, Worthington was immune from tort liability for Patton's claims and the Superior Court's order was reversed.

For more information on these matters, please contact Michelle Coburn (coburnm@whiteandwilliams.com; 215.864.6355) or Michael Jervis (jervism@whiteandwilliams.com; 215.864.7042).

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