



## Edward Koch Obtains Reversal of Multi-Million Dollar Judgment Against General Contractor

May 8, 2014

Edward M. Koch, Chair of White and Williams' Appellate Practice Group, obtained the complete reversal on appeal of a \$2 million judgment against a general contractor in a case that was tried by another law firm.

Edward was retained following the entry of the jury verdict in a construction accident case in the Philadelphia County Court of Common Pleas. The accident occurred in Delaware. After a careful review of the file, Edward decided to assert a new defense after trial that was not previously raised: Pennsylvania's statutory employer defense. Under Pennsylvania law, a general contractor is required to provide a subcontractor's employee with workers compensation insurance in the event that the subcontractor fails to obtain the insurance itself. In exchange, the general contractor is afforded immunity from suit regardless of whether the general contractor actually had to provide workers compensation insurance to the injured subcontractor's employee. The defense had not been raised previously by trial counsel. In post-trial submissions, the trial judge rejected the defense as waived and entered judgment on the jury's verdict.

On appeal, Edward argued that, although the accident occurred in Delaware, Pennsylvania's statutory employer immunity applied, and thus, absolved the general contractor of liability. The Pennsylvania Superior Court agreed in a precedential decision. It held that although belatedly asserted, the defense of immunity was not waivable because it addressed the court's subject matter jurisdiction. The court then analyzed whether a true conflict existed between Pennsylvania and Delaware law on this and concluded that no true conflict existed because Pennsylvania and Delaware both afford a general contractor such immunity, albeit on different bases. In the absence of a true conflict, the Superior Court applied Pennsylvania statutory employer immunity and found that all of the requisite elements existed to conclude that the general contractor was the statutory employer of the injured subcontractor's employee. As a result, the court reversed the \$2 million judgment and remanded the case back to the trial court for entry of judgment notwithstanding the verdict in favor of Edward's client, J.J. DeLuca Company, Inc.

The decision can be found [here](#).

### Attorneys

Edward M. Koch

### Practice Areas

Appellate



Edward Koch Obtains Reversal of Multi-Million Dollar Judgment Against General Contractor | Continued

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If you are interested in obtaining more information about this case or issue, please contact Edward Koch (215.864.6319; [koche@whiteandwilliams.com](mailto:koche@whiteandwilliams.com)).

