

Construction Law Update

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Court Limits Design Professionals' Immunity Under Workers' Comp Law

Design professionals “retained to perform professional services on a construction project” in Washington are generally immune from third-party workers’ compensation lawsuits, unless the design professional contractually assumes responsibility for the safety of others or negligently prepares design plans or specifications. The state Supreme Court limited this statutory immunity last week when it held that an engineering firm was not entitled to the Industrial Insurance Act’s (“IIA”) immunity for the death of a sewage treatment plant worker. The case had two key rulings:

1. The Court ruled that there was no construction occurring in connection with the specific design work at issue, which consequently deprived the firm of the immunity protection; and
2. The Court said that the firm had negligently prepared design plans and specifications, even though none of those plans or specifications had been put in writing.

The case of *Michaels v. CH2M Hill, Inc.* involved a Spokane wastewater treatment plant where one of the digester domes collapsed and pitched a worker into 100-degree sewage sludge. That worker drowned and two others were injured. CH2M Hill had been hired to provide engineering services for a 10-year project to upgrade and retrofit the plant. Although the state IIA provides design professionals with immunity from lawsuits by third parties, the Supreme Court upheld the trial court’s ruling that CH2M Hill was not entitled to immunity and was negligent.

One of the primary issues was interpretation of the phrase “construction project,” which is a prerequisite for immunity under the statute. The Court construed that phrase narrowly and said the upgrade and retrofit of portions of the facility did not include the digesters where the accident occurred. Instead, the Court said that the work on the digester was part of the firm’s “on-call” contract to support plant operations separate from any construction. The Court stated:

“We do not believe that the legislature meant that when construction was performed on one building on a campus, engineering professionals were entitled to immunity everywhere on the campus regardless of the nature of their professional services.”

Because the statute excludes negligently prepared design plans and specifications from immunity protection, the Court said that CH2M Hill's work on the digester, even though not in writing, was not subject to immunity. The Court added that there was no distinction between recommending changes in the piping and location of components, and preparing written plans and specifications to accomplish the same thing.

Also, the Court reiterated the standard of care for design professionals "to 'exercise the degree of skill, care, and learning possessed by members of their profession in the community.'" This duty extends "to those working on the property at the time the designs were being implemented."

Three judges on the Court joined in a separate opinion that agreed the engineering firm was negligent in its design work, but disagreed that there was any reason to address the scope and meaning of "construction project." According to the concurring opinion, the majority's narrow interpretation of "construction project" dramatically curtails design professionals' statutory immunity under the IIA, while at the same time not necessarily advancing the purpose of the Act, which is to provide relief to injured workers.

Both opinions recognized that design professionals have long been vulnerable to suits by injured workers under workers' compensation statutes that shield their employers from such lawsuits. The statutory immunity provision for design professionals is intended to reduce that exposure. The Court's decision, however, appears to have narrowed the protection for design professionals and is likely to lead to further litigation against architects and engineers when a worker is injured.

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