

NEW MEXICO INJURY ATTORNEY BLOG

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Worker's Compensation Exclusivity for Injured Workers Hard to Overcome

The New Mexico Court of Appeals case, *Chairez v. James Hamilton Construction Co.*, discussed in my prior post also addressed issues related to exclusive remedy of worker's compensation for employees injured on the job. Most states have statutes similar to New Mexico limiting an injured worker's claims against a negligent employer to worker's compensation. As was the case in *Chairez*, there are exceptions for injuries caused as the result of the negligence of a third party.

In *Chairez*, the deceased plaintiff's estate (plaintiff) sued the manufacturer for a defective rock crusher under product liability law. The defendant's motion for summary judgment due to modification of the equipment by the plaintiff's employer was denied. It was clear that the employer's modification of the rock crusher by removing a critical safety feature was negligent and contributed to the death of the plaintiff.

Due to New Mexico's exclusive worker's compensation remedy against the employer, plaintiff was unable to bring a claim against the employer despite the employer's obvious negligence, and arguable recklessness. The court cited the seminal 2001 New Mexico Supreme Court case on the issue of *Delgado v. Phelps Dodge Chino* in support of its discussion.

The Court laid out the requirements set forth in *Delgado* for the waiver of worker's compensation protection by an employer. *Delgado* holds that an employee can bring an action against the employer for work related injuries in very rare situations. The court in *Chairez* stated the *Delgado* factors as; "(1) he or she can establish that the employer engaged in an intentional act or omission without just cause that is reasonably expected to result in the injury to the worker; (2) the employer expected the intentional act or omission to result in the injury; and (3) the intentional act or omission proximately caused the injury."

Thus, the hurdle for getting past worker's compensation exclusivity is very high. In *Chairez*, the plaintiff was unable to clear this hurdle despite the obvious negligence of the employer in removing the safety features from the rock crusher.

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Unfortunately, New Mexico like most states, provides far greater protection for the employer than the injured employee. The statute is drafted as if it is meant to protect employees. In reality, it is there to protect employers. The result is that countless workers each year in New Mexico and in other states are gravely injured or killed by the negligence and/or recklessness of their employers. The root of the behavior is often economic as in *Chairez* where the safety mechanism was removed so that the rock crusher could be cleaned faster to minimize down time.

Worse still, workers or their surviving families receive only nominal awards from for their damages. They receive pennies on the dollar for their lost wages which may be permanent and total. They receive only trivial awards for the rather cynically and miserly computation of their impairment ratings for permanent injuries. They do receive medical costs, past and future, associated with the injury. If the insurance companies can find a way around this, they do. The injured employee receives no other compensation for pain and suffering, loss of consortium, loss of enjoyment of life, loss of household services or any other losses.

In the end, society pays through Social Security, Medicaid, Medicare and other governmental programs. Thus, taxpayers are left to cover losses that should rightfully be paid by the businesses that caused them.

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