

# NEW MEXICO INJURY ATTORNEY BLOG

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## **Third Party Liability in Construction Accident Avoids Limits of Workers Compensation Laws**

Construction accidents can be devastating. They are generally far more serious than other workplace injuries. Often times, unlike run of the mill workplace accidents, construction accidents result in permanent injuries and even death.

Workers compensation laws, including those in New Mexico, presumably drafted to protect workers instead generally place a grossly inadequate cap on the amount and types of damages that can be recovered for a workplace accident. The statutes are really for the protection of the employer, not for the employee. Workers compensation statutes protect the employer from any claims of negligence though the cause of workplace accidents is often the result of unsafe work environments, inadequate training, unsafe and unqualified co-workers, dangerous and poorly maintained equipment and a hosts of other preventable causes. In essence, the employer is shielded from any liability for the worker's injuries and damages except in the most extreme cases of recklessness.

In order for an injured worker to recover for what in a construction accident could be catastrophic injuries or death, the worker must identify a third party beyond the employer that is responsible for the accident.

In a recent case in Texas, the attorney did just that. The case is very interesting for a number of reasons not the least of which was the \$11 million jury verdict in favor of the deceased construction worker. Perhaps, more interesting from a legal perspective, was the plaintiff attorney's ability to tie liability to the employer's parent company escaping the limitations of the worker's compensation statutes.

Because the deceased plaintiff's estate was barred from suing his employer, the attorney ingeniously argued that the defendant's (Gulf Marine Fabricators) parent company (Gulf Island Fabrication) was responsible for the plaintiff's death. The attorney did admit to the jury that there was some fault lying with the employer, but argued that the parent company carried the bulk of liability for the crane accident which resulted in the plaintiff being crushed to death. The jury assigned only 15 percent liability to the employer. The remaining 85% liability accounted for the \$11 million wrongful death jury verdict.

Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958

<http://www.newmexicoinjuryattorneyblog.com/>

The plaintiff's attorney was able to show that the parent company and not the employer controlled the crane operations. The parent company controlled every aspect of the crane operations from hiring and firing to daily operations. Oddly, but by necessity, the defense attempted to place all the blame on the employer, a related company, to gain the protective shield of the workers compensations statutes.

The fact that a defense attorney would attempt to place blame on a company related to his own client clearly illustrates the reality that workers compensation statutes should really be called employer protection statutes. These statutes have sad and tragic consequences for workers and their families. Neither the worker nor his or her family will recover anything close to actual damages in cases of serious injuries or wrongful death. It takes little imagination to envision the economic harm, let alone the pain and suffering, that occurs when a worker is permanently injured or killed.

Unfortunately, the workers compensation statutes are here to stay. As such, if you or a loved one are injured or killed on the job, it is important that all possible causes of the accident be determined. It may very well be that the workers compensation statutes can be avoided by identifying third party liability for the accident. Or as the ingenious lawyer in this case was able to do, tie the liability to a related corporate entity not protected by the worker compensation statutes.

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