

Court Finds that an Illegal Immigrant can Assert a Lost Wage Claim in Connection with a Personal Injury Lawsuit

In Kalyta v. Versa Products, et. al., a federal judge found that an illegal immigrant can assert a lost wage claim in connection with a lawsuit for personal injuries.

In this matter, plaintiff had entered the United States under a student visa. Instead of going to school, plaintiff immediately began working. Eventually he was hired by a satellite dish installation company. While installing a satellite dish approximately twelve feet above the ground, the ladder he was using collapsed. As a result of his fall, plaintiff alleges to have sustained significant injuries. Plaintiff not only sued for personal injuries, but lost wages due to his inability to work as a result of those injuries (plaintiff's settlement demand of \$4.5 million consists of \$1.5 million for lost wages). Plaintiff filed suit against Home Depot and Louisville Ladder.

The defendants moved for summary judgment to bar plaintiff from asserting a claim for lost wages. In their motion, the defendants contended that as plaintiff was not authorized to work in the United States at the time of the accident, he should not be permitted to recover for past and future lost wages. To support their argument, the defendants relied, in part, on Immigration Reform and Control Act of 1986 ("ICRA") which created a "comprehensive scheme prohibiting the employment of illegal aliens in the United States." The defendants cited case law in other jurisdictions holding that allowing the award of back pay and lost wages to undocumented aliens circumvented the ICRA's goal of preventing illegal immigration. In addressing this argument, the Court recognized that the Third Circuit Court of Appeals has not issued a ruling as to whether an individual can recover for economic losses in the context of a personal injury lawsuit when that individual cannot legally obtain work in the United States.

In this matter, the court recognized the general proposition that "every person is entitled to the equal protection of the law [and] every alien, whether in this country legally or not, has a right to sue those who physically injure him." The court then continued to evaluate cases from various jurisdiction addressing whether an illegal alien was entitled to lost wages as a component of a personal injury case. In performing its case review, this court noted a distinction between those illegal aliens who fraudulently obtained employment (e.g. presented fake identification) and those who were hired by an employer who did not check that individual's immigration status. Specifically, the court noted that in other District Court decisions holding that an illegal alien's attempt to claim lost wages was impermissible was based, in part, on that fact that that individual utilized fraudulent and/or counterfeit documents to obtain employment.

Due to the differing decisions in the various jurisdictions and that the Third Circuit Court of Appeals has issued no decision on this issue, the court turned to New Jersey state court decisions in deciding whether plaintiff could pursue his lost wage claim. The court noted that the New Jersey Appellate Division has held that "where the governing workplace statutory scheme makes legal employment a prerequisite to its remedial benefits, a workers' illegal alien status will bar relief thereunder." However, the court noted that the defendants failed to identify any New Jersey authority that states legal employment is a prerequisite to recovering lost wages in a personal injury action. Accordingly, the court concluded that "neither IRCA nor New Jersey law prohibits lost wages damages for undocumented workers in the personal injury tort context."

While the court denied the motion for summary judgment, it did acknowledge that it was possible that any economic report offered by the plaintiff may be found inadmissible due to it being based solely on American wages and not considering the possibility of deportation, back and forth migration and prevailing wages in plaintiff's home country.

Prior to this decision, it was a widely held belief that an undocumented plaintiff could not assert a lost wage claim. Generally, where a plaintiff claimed during discovery they would pursue a lost wage claim, at trial they usually would not do so as the plaintiff would open themselves to possible deportation and tax issues. With this decision, plaintiffs will have the opportunity to present a lost wage claim to a jury. However, to do so, the plaintiff must weigh the possibility of deportation and criminal charges for failing to pay taxes. Also, plaintiff's illegal immigration status should be presented to the jury, which may create a negative attitude towards the plaintiff.