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PRACTICE AREAS

Workers Compensation

Personal Injury

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United States 5th Circuit Court of Appeals Addresses Immigration Status in Workers' Compensation Claim

4/29/2010

Last week, the United States Court of Appeals for the Fifth Circuit handed down an important workers' compensation decision. In [Bollinger Shipyards, Inc. v Director, Office of Workers' Compensation Programs](#), No. 09-60095, the Fifth Circuit considered whether Jorge Rodriguez, an undocumented immigrant who was injured on the job, was entitled to benefits under the Longshore and Harbor Workers' Compensation Act (LHWCA).

The employer asserted that the injured worker was not entitled to benefits since his "injury caused him no loss of wage-earning capacity because he had no legal wage-earning capacity at the time he was injured." The Fifth Circuit disagreed and upheld the ALJ's ruling—that Rodriguez was entitled to receive benefits under the LHWCA.

In reaching its decision, the court noted:

(T)he remedy provided by the LHWCA is merely a substitute for the negligence claim that an employee could otherwise bring against his employer in tort. As one court has observed, "it would not only be illogical but it would also serve no discernable purpose to accord illegal aliens the right to bring affirmative claims in tort for personal injury but deny them the right to pursue the substitutionary remedy for personal injuries sustained in the workplace."

Finally, the Court emphasized that: 1) workers' compensation under the LHWCA is a non-discretionary remedy, 2) the LHWCA was enacted as a substitute for tort claims, and 3) the LHWCA expressly provides for the



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award of benefits to nonresident aliens.

This is a decision that simply makes sense—any other holding would encourage employers to hire illegal immigrants in order to circumvent the important protections provided by the LHWCA.