



Ankin Law Office LLC

Protecting the Rights of Injured Workers

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Is a Plaintiff's Immigration Status Relevant In a Personal Injury Lawsuit?



The United States District Court recently issued an interesting decision in an [Illinois personal injury case](#). In *Zuniga v. Morris Material Handling, Inc.*, 2011 WL 663136 (N.D.N.Y 2011), the plaintiff was injured while working at a construction site when the hoist assembly of an overhead crane fell and struck him. Zuniga sought recovery of expenses for medical expenses, damages for pain and suffering and compensation for loss of earnings and loss of future earning capacity as a result of the injuries he sustained from the incident.

During the deposition, Zuniga was asked about his immigration status in relation to his wage claim. Zuniga asserted his Fifth Amendment privileges and refused to answer that line of questioning. This motion followed, in which the defendant sought to compel Zuniga to answer the immigration-related questions.

At issue was whether Zuniga's immigration status was an issue that was relevant during the deposition stage of discovery. The Court concluded that it was:

In summary, Morris's motion is granted to allow discovery of Zuniga's immigration status during the period for which he seeks the subtopics Morris has identified are relevant. Zuniga's immigration status the subtopics Morris has identified are relevant. Zuniga's immigration status prior to the time period for which he claims damages for lost earnings or earnings capacity is not relevant.

As for the Fifth Amendment invocation, the Court noted that generally speaking, the privilege may be asserted in a civil proceeding, but an adverse inference may be drawn from the refusal to respond. As for the specific facts of this case, the Court held that:

Zuniga has a right to invoke his Fifth Amendment privilege, but this record has not yet been developed sufficiently to evaluate whether his invocation is proper as to any particular questions.

Accordingly, the Court remanded the matter for further discovery proceedings.

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