



Employers Beware: Indiana Supreme Court Expands the Scope of the “Duty of Care” Owed to a Subcontractor’s Employees

Insights

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In light of a recent decision from the Indiana Supreme Court, Indiana employers—and construction companies in particular—should review their contracts and subcontracts to determine if they have unwittingly assumed a duty of care for other entities’ employees. In *Ryan v. TCI Architects/Engineers/Contractors, Inc. et al.*, the Court ruled that a general contractor’s “form contract” with its client caused it to assume a duty of care to keep a worksite safe for a sub-subcontractor’s employee—even though the general contractor’s subcontract placed the onus of securing employee safety on the subcontractor. — N.E.3d —, 2017 WL 148885 (Ind. Apr. 26, 2017). As a result of this ruling, a general contractor can potentially be liable to a subcontractor’s employee who suffers a workplace injury.

The Facts

In June 2012, TCI entered into an agreement with Gander Mountain to serve as the general contractor for a construction project. The parties memorialized their agreement in a form contract created by the Design-Build Institute of America. The contract provided that TCI “recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss . . . to individuals at the Site, whether working or visiting,” and directed TCI to “assume[] responsibility for implementing and monitoring all safety precautions and programs related to the performance of the work.” TCI also agreed to designate a Safety Representative who would “supervise the implementation and monitoring of all safety precautions,” “make routine daily inspections of the Site,” and “hold weekly safety meetings” with TCI and the various subcontractors. Importantly, the contract provided that TCI’s “responsibility for safety . . . is not intended in any way to relieve Subcontractors . . . of their own contractual and legal obligations and responsibility for . . . taking all necessary measures to implement and monitor all safety precautions and programs” for their employees.

TCI also entered into various subcontracts with its subcontractors, including Craft Mechanical. In the TCI-Craft subcontract, Craft agreed that it would be “solely responsible for the protection and safety of its employees.” Craft further subcontracted with B.A. Romines Sheet Metal. In the Craft-Romines agreement, Romines agreed to “take reasonable safety precautions with respect to performance of [the] Subcontract,” and to “comply with safety measures initiated by [Craft] and with all applicable laws[.]”

The plaintiff, Michael Ryan, was an employee of Romines who was assigned to the worksite. On his second day of work, Ryan fell off of an 8-foot ladder and suffered various injuries. He brought a negligence action against TCI and Craft, claiming they had a duty to provide him with a safe workplace. TCI moved for summary judgment on Ryan's claims on the grounds that it did not owe a duty of care to Ryan. The Indiana Court of Appeals agreed with TCI and dismissed Ryan's claim. In reaching its decision, the Court of Appeals pointed to language in the TCI-Gander Mountain contract which suggested that the subcontractors assumed responsibility for safety matters; TCI was merely responsible for supervising the work of its employees and contractors.

The Indiana Supreme Court's Decision

The Indiana Supreme Court reversed the Court of Appeals' opinion and found that TCI *did* assume a duty of care to keep the worksite safe for its employees and the employees of its subcontractors. In reaching this holding, the Supreme Court first recognized the "long-standing rule" that a general contractor like TCI "will ordinarily owe no outright duty of care to a subcontractor's employees, much less so to employees of a sub-subcontractor" because it has little to no control over the method by which the subcontractor completes the work. It then recognized five exceptions to the general rule, one of which arises when a contract "affirmatively evinces an intent to assume a duty of care."

In reviewing TCI's contract with Gander Mountain—including the provisions considered by the Court of Appeals and a section heading titled "[TCI's] Responsibility for Project Safety"—the Supreme Court concluded that TCI intended to assume the duty to keep the worksite safe. The Court also determined that the contract gave TCI a "level of control" over the worksite, and that its agreement to appoint a safety representative was indicative of its intent to maintain a reasonably safe environment.

Importantly, the Court limited its review to the TCI-Gander Mountain contract and refused to consider previous Indiana cases involving contracts with similar language. (Interestingly, the Court of Appeals relied on that same precedent in finding that TCI did not owe a duty of care to Ryan.) The Court also disregarded the language of the TCI-Craft and Craft-Romines subcontracts because those agreements were entered into *after* the TCI-Gander Mountain contract. The Court sent the case back to the trial court to determine if TCI breached its duty to Ryan and, if so, whether that breach caused Ryan's harm and entitled him to damages.

What Does This Mean for Indiana Employers?

Though this case arose in the construction context, it could potentially be expanded to employers who contract with third parties to provide contingent workers, including staffing agencies. The Indiana Supreme Court clearly indicated its intent to strictly construe contract language that purports to allocate responsibility for employee safety issues. For this reason, Indiana employers should review their contracts and staffing agreements to determine if they have (perhaps unwittingly) assumed responsibility for the safety of a third party's employees.

You may also be wondering why Ryan did not pursue a claim against his direct employer, B.A. Romines. While the Supreme Court did not specifically address this in its opinion, Ryan would be precluded from pursuing a tort or negligence claim against Romines based on the exclusivity provision of the Indiana Workers' Compensation Act, Indiana Code § 22-3-2-6. As the Indiana Court of Appeals acknowledged in *Hall v. Dallhman Contractors, LLC*, the Indiana Workers' Compensation Act provides the exclusive remedy to employees who seek to recover for personal injuries arising out of and in the course of their employment. 994 N.E.2d 1220 (Ind. 2013). Thus, the Act prevents employees from seeking to recover against their employers for personal injuries, but it does not limit an employee's ability to recover against a third-party that is not the employee's employer. *Id.* Other states, including Kentucky, extend the "exclusivity" defense to third-parties like TCI and Craft, but Indiana courts have not yet done so.

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