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December Newsletter

Dear friends, colleagues and clients,

**We are pleased to bring you the December 2019
Newsletter from Holt Woods & Scisciani LLP**

Points of Interest

Vargas v. Inland Washington et al.

On November 21, 2019, the Washington State Supreme Court issued its decision in *Vargas v. Inland Washington et al.*, which arguably expanded a general contractor's liability for personal injuries occurring on the jobsite.

By way of summary, Plaintiff Gildardo Crisostomo Vargas was working on a construction project when a concrete-carrying hose whipped around, hit him in the head, and caused a severe traumatic brain injury. At the time of the incident, Plaintiff was helping pour the concrete walls of what would become a parking garage for an apartment building. Plaintiff was employed by Hilltop Concrete Construction LLC ("Hilltop"). Inland Washington LLC ("Inland") was the general contractor on the construction project. Inland subcontracted with Hilltop to install concrete. Hilltop, in turn, entered into agreements with Ralph's Concrete Pumping Inc. ("Ralphs") and Miles Sand & Gravel Company ("Miles").

Plaintiff sued Inland, Ralphs and Miles for negligence. The trial court granted summary judgment in favor of the general contractor and stayed the proceedings against Ralphs and Miles pending Plaintiff's appeal to the Supreme Court, which was limited to Plaintiff's claims against Inland. Plaintiff claimed that Inland was directly liable because it (1) breached its common law duty to provide a safe workplace, (2) violated WISHA and (3) was vicariously liable for any negligence of Hilltop, Ralphs and Miles. Plaintiff requested discretionary review from the Washington Supreme Court, which was granted. The Supreme Court reversed and remanded the case to the trial court, finding that genuine issues of material fact remained regarding both Inland's direct and vicarious liability.

Direct Liability

The Court found that Inland was potentially *directly* liable under two theories.

First, a general contractor has a common law duty to maintain a safe workplace. The Court found that if a general contractor has the authority to supervise a given area, then it must ensure that the area is safe. “This is true regardless of whether an expert other than the general contractor happens to be in charge of a specific job in the area. It is true regardless of whether multiple subcontractors happen to be working in that area at the same time.” Second, the Court held that a general contractor has a statutory duty to comply with WISHA. The Court found that “a general contractor *always* owes this duty under WISHA – no analysis of whether the general contractor retained control is necessary.”

Vicarious Liability

The Court also found that Inland was potentially *vicariously* liable under two theories.

First, a general contractor may not delegate its statutory duty to comply with WISHA. The Court held that if a general contractor delegates its own duties to a subcontractor, the general contractor will be liable for the subcontractor’s breach of that delegated duty. Second, a general contractor will be vicariously liable for the negligence of any entity over which it exercises control. Thus, multiple entities – jobsite owners, general contractors, subcontractors – may concurrently owe independent yet overlapping duties to maintain a safe workplace. And one entity, such as a general contractor, may be vicariously liable for another entity’s, such as a subcontractor’s, negligence. This is distinguishable from the version of vicariously liability that arises when a general contractor delegates *its own* nondelegable duty. The Court held that Inland, as the general contractor, supervised the jobsite and had a right to exercise control over the work of the various entities on the jobsite and thus is potentially liable for the negligence of those other entities. Notably, the Court concluded that “[o]f course, a general contractor who retains a right to exercise control will not be vicariously liable unless the plaintiff proves that some entity on the jobsite was negligent. But if the plaintiff can do that, then the general contractor will be vicariously liable for that negligence.”

Implications

This decision reaffirmed and potentially enlarged a general contractor’s expansive duties to ensure worker safety. In this case, the Court found that a genuine issue of material fact remained as to Inland’s direct liability for breaches of either its common law or statutory duties and Inland’s vicarious liability for the negligence, if any, of the other subcontractor’s working on the jobsite. This ruling will make it even more difficult for a general contractor to prevail on a motion for summary judgment, as there will likely be questions of fact regarding at least one subcontractor’s negligence and therefore the general contractor would be held to be vicariously liable.

In light of this ruling, general contractors should review their current indemnity and immunity waivers used with their subcontractors to ensure that the subcontractors have agreed to waive their immunity and defend and indemnify the general contractor to the extent of the subcontractor’s negligence.



Contributing Attorney: Kelsey Shewbert

Kelsey L. Shewbert is a Senior Associate in the Seattle office of Holt Woods & Scisciani LLP. Ms. Shewbert focuses her practice on a variety of complex civil litigation, including the defense of businesses and individuals against construction defects, premise liability, and personal injury lawsuits.

Recent Happenings

Congratulations to **Dirk Holt** and **Josh Campbell** for obtaining a complete dismissal of all claims on summary judgment for alleged negligence involving a commuter train hitting a pedestrian.

Congratulations to **Tony Scisciani**, who recently was chosen to become the President of the Seattle Chapter of the Claims and Litigation Management Alliance (“CLM”). Tony currently is the Vice President of the Seattle Chapter and was Director of Events in 2018. HWS is actively involved with CLM, so please contact us if you would like information about the Seattle Chapter and its upcoming events.

See www.theclm.org for more information about CLM.

Congratulations to **Tony Scisciani** for being invited to speak at the CLM Annual Conference in Dallas, TX in March of 2020. Tony will be part of a panel of qualified claim and litigation professionals, leading a session entitled, “Step Right Up! The Circus of Indemnity Claims and the Interplay of Insurance, Indemnity and Limitation of Liability.” The presentation and discussion will relate primarily to the subject of indemnity and will focus on allocation of risk through contracts and insurance in a variety of contexts.

See www.theclm.org for more information about the CLM and its Annual Conference.

Congratulations to **Dennis Woods** and **Kelsey Shewbert** for obtaining a defense verdict at a recent Alaska trial. Dennis and Kelsey were defending a national retailer against a claim by the plaintiff for personal injury and wage loss. Plaintiff alleged that palletized merchandise was improperly placed in the store during business hours as part of the freight process. Plaintiff alleged that the palletized merchandise also was too low and hidden behind an endcap – thus creating a tripping hazard. Plaintiff asked the jury for over \$1,000,000. After deliberating, the jury returned a defense verdict and our client is entitled to an award of fees and costs in light of beating an offer of judgment that was filed early in the case.

Congratulations to **Dennis Woods** and **Jimmy Meeks**, who recently scored a couple of big wins in cases which arose out of a gas explosion in a Seattle business district.

The first win involved the \$16,000,000+ contractual indemnity claim by the gas utility company, alleging defects in our client’s work led to the explosion. We secured dismissal of the plaintiff’s entire case on summary judgment under Washington’s construction statute of repose. The court agreed with our argument that, if one or more discrete tasks of a construction project remain incomplete, the project is nonetheless considered “substantially complete” under the statute of repose if the project is ultimately used for its intended purpose – even when the scope of the project encompasses an entire city block. The decision is currently on appeal.

The second win came from Division I of the Washington Court of Appeals. The case involved the personal injury claims of the firefighters who responded to the gas explosion. The Court of Appeals unanimously affirmed the lower court’s dismissal of the firefighters’ complaint under the professional rescuer doctrine. The court ruled that an explosion is a danger inherent to responding to gas leaks, even when firefighters may not be fully aware of the circumstances surrounding the leak. Furthermore, the court ruled that Washington does NOT recognize an exception to the professional rescuer doctrine for willful, wanton, or reckless acts causing the need for first responders at the scene.

Congratulations to **Dirk Holt** who has been appointed as a trustee to the Board of Washington Defense Trial Lawyers (WDTL). Aside from the Washington State Bar Association, WDTL is the primary defense bar organization serving defense attorneys statewide. This is Dirk’s second stint as

a trustee. He previously served from 2008 to 2013.

Our Partners



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About Holt Woods & Scisciani LLP

Holt Woods & Scisciani LLP is a civil litigation firm, practicing in the areas of tort and commercial litigation, construction litigation, insurance defense, product liability, professional liability and appellate work. For more information about our firm, and our areas of practice, please refer to our website at www.hwslawgroup.com or feel free to contact any of our partners listed above.

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