



Higgins
Cavanagh
Cooney

Rhode Island Supreme Court Reexamines the Exclusivity Provision of the Workers' Compensation Act



Peter Garvey



Adrianna Hughes

On November 5, 2020, the Rhode Island Supreme Court reexamined the Exclusivity Provision of the Workers' Compensation Act in the case of Selby v. Baird (R.I. Sup. Ct., Nov. 5, 2020).

An employee-plaintiff was working for Mike's Professional Tree Service as a foreman of a tree removal crew when a company vehicle rolled backward and pinned the plaintiff against a dump truck. As a result, the plaintiff was severely injured and became permanently disabled.

The plaintiff filed a workers' compensation

claim against Mulch-N-More and was awarded benefits. After settling the workers' compensation claim, the plaintiff filed a negligence claim in Superior Court against Mike's Professional Tree Service.

Summary judgment was sought on the basis that the plaintiff was an employee of Mike's Professional Tree Service at the time and thus could not file suit against his employer due to the Exclusivity Provision of the Workers' Compensation Act. The Superior Court agreed and granted summary judgment.

On appeal, the plaintiff argued that he was not an employee of Mike's Professional Tree Service at the time, but rather an employee of Mulch-N-More. He argued that he received paychecks from Mulch-N-More, and Mulch-N-More processed his workers' compensation claim. The plaintiff also noted that the Workers' Compensation Court made a finding that he was an employee of Mulch-N-More when workers' compensation benefits were awarded.

The Supreme Court maintained that this case was squarely on point with prior holdings in

Deus v. S.S. Peter and Paul Church, 820 A.2d 974 (R.I. 2003) and Sorenson v. Colibri Corp., 650 A.2d 125 (R.I. 1994) and affirmed the judgment of the Superior Court.

In Sorenson, the plaintiff was an employee of a staffing agency assigned to work for the defendant corporation. The plaintiff was injured working for the defendant corporation but received workers' compensation benefits through the staffing agency. He then filed a claim against the defendant corporation in Superior Court.

Although the employment agency paid plaintiff's salary and provided his workers' compensation benefits, the Court held that the

defendant corporation was also an employer. The Court noted that an employee may have more than one employer at a time, particularly when one employer has operational control while another is responsible for administrative support. Thus, the Exclusivity Provision of the Workers' Compensation Act barred plaintiff's claim against defendant company.

With these principles in mind, the Supreme Court held that the plaintiff in the present case was an employee of Mike's Professional Tree Services, citing its dominion and operational control over the plaintiff. The fact that Mulch-N-More served an administrative function of providing

plaintiff his paycheck and workers' compensation benefits did not change that fact. The Court's decision may allow for a more expansive application of the Exclusive Remedy Doctrine in future tort actions.

***Peter E. Garvey** is the supervising partner of the Workers' Compensation Department. **Adrianna Hughes** is an attorney in the firm's Workers' Compensation and Litigation Departments. HCC attorney Tyler J. Pare contributed to this article.*

This alert is offered as general information. It should not be construed as legal advice or a legal opinion on any particular facts or circumstances, and does not create an attorney-client relationship.

November 23, 2020