



The Coffee House

Fall 2008

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CASE NAME: Luis Roman, Velia Roman, individually and as the parents and legal guardians, on behalf of Jessica Roman, Erica Roman, Luis Roman (Jr.) and Eduardo Roman v. Delta Constr., Inc., and Philip Pfannebecker Sara Pfannebecker, individually, dba JP Enterprises, Albany County District Court, WY, Civil Action No. 30243

FACTS: On August 25, 2005, Luis Roman, a 38 year old resident of Colorado was working for a Colorado insulation subcontractor called MATO, which sent him temporarily to Laramie, Wyoming to work on a commercial building project for the Wyoming Technical Institute under the general contractor Delta Construction, a Wyoming Corporation. Luis fell through an unsecured 4 x 12 foot panel of sheet metal roofing covering an opening for an HVAC unit, a distance of 20 feet to the concrete slab floor.

As a result of his fall, Luis suffered a severe comminuted acetabular (hip joint) fracture, facial bone fractures, head injury, bilateral wrist fracture, and a severe knee injury from the fall. He required major surgeries and his medical expense totaled \$257,760, all paid by the Colorado workers compensation system.

The roofing responsibilities were subcontracted out by Delta Constr. to JP Enterprises. The collapsed roofing panel section was a result of JP Enterprises' failure to secure the panel in violation of both OSHA regulations and recognized construction practices. JP's employees failed to screw down the 4 x 12 panel section which created an indistinguishable trap door scenario.

Luis' situation left his attorneys with the decision of whether to file suit in Wyoming or Colorado. Luis was a citizen of Colorado, working for a Colorado company, on a project in Laramie, Wyoming, with a Colorado third-party subcontractor defendant and a Wyoming general contractor defendant. Luis' attorneys chose the Second Judicial District of Wyoming as the venue for this suit.

SUMMARY JUDGMENT: Judge Jeffery Donnell for the Second Judicial District of Wyoming presided over the case. Defendant Delta Constr. brought summary judgment motions on two issues. First, Delta argued that because Delta had in fact contributed to the Colorado Workers Compensation System, they are entitled immunity according to Colorado's Statutory Employer immunity shield and Wyoming's lex loci principle of apply the law where the tort occurred did not apply. Second, Delta argued that as a general contractor, it owed no duty to Luis. The Court ruled in favor of Delta on both motions, holding that because Delta did contribute to the Colorado workers compensation system, and general contractors are immune from claims by subcontractor employees, that Delta was a statutory employer under Colorado law, even though no similar immunity provision exists under Wyoming law. Secondly, the Court held that Delta did not owe a duty to Luis under the law, as Delta failed to assume safety responsibilities as the general contractor. After this ruling by the court, JP Enterprises was the sole remaining defendant.

SETTLEMENT: Due to Luis' injuries, he could no longer do construction work. Luis was making approximately \$36,000+/yr at the time of his accident. His future wage losses amounted to over \$500,000, which included substantial future medical expenses. Luis' loss of quality of life was also substantial. Luis is now forced to work in a gas station at \$8/hr.

Luis' economic report amounted to over \$1,000,000.00, and had substantial non-economic damages. Defendant JP recognized that its liability was difficult to dispute and sought to settle this case before going to trial. The plaintiff was poised to present evidence to the jury of conduct amounting to willful, wanton, or reckless conduct, justifying punitive damages. JP's aggregate insurance policy amounted to \$2,000,000.00. Negotiations between Kent Spence and the representative for the insurance provider, Safeco, proved to be successful. The parties worked in a reasonable and diligent manner to settle the case for \$1,800,000.00.

ATTORNEYS: Plaintiff: Kent W. Spence & Grant H. Lawson, The Spence Law Firm, LLC., Jackson, WY; James E. Gigax, Bloom, Murr & Accomazzo, P.C.

Defendant: Timothy w. Miller, for Delta Constr.; Rebecca A. Lewis, Pence & MacMillan, LLC, for JP Enterprises.

Plaintiff's Experts: construction standards, vocational rehabilitation, economist.

SUBMITTED BY: Kent W. Spence

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