

TENNESSEE FEDERAL COURT APPLIES TENNESSEE LAW IN WORKERS' COMPENSATION THIRD PARTY ACTION INVOLVING TEXAS ACCIDENT

Scott v. AMEC Kamtech, Inc., 2008 WL 4415496 (E.D. Tenn. 2008)

The world of extra-territorial workers' compensation subrogation involving multiple states is a complex and confusing area of the law. Each of the 50 states has their own body of "conflicts of laws" which governs such situations, some clearer than others. A Tennessee federal court has just decided a significant issue of extra-territorial subrogation law which neither the Tennessee Courts of Appeal nor the Tennessee Supreme Court have addressed. At least in Tennessee, the issue of extra-territorial workers' compensation subrogation just got a little bit clearer.

In *Scott v. AMEC Kamtech, Inc.*, Scott, a Tennessee employee of Valley Mechanical, Inc. ("Valley"), a Tennessee corporation, was injured while working on a project in Texas on which AMEC Kamtech, Inc. ("AMEC") was the general contractor. Scott filed for and received workers' compensation benefits under the Tennessee Workers' Compensation Act, and filed suit against AMEC in Tennessee federal court. AMEC filed a motion for summary judgment, because Tennessee § 50-6-108 provides that a general contractor is responsible for providing workers' compensation benefits in the event the subcontractor employer of an injured worker fails to so provide. The Tennessee statute also provides that if the employer does provide benefits to the worker, the general contractor is still considered to be a "statutory employer" and is immune from being sued as a third party because of the exclusive remedy rule which prohibits third party lawsuits against an employer.

Under Tennessee law, the worker could not sue AMEC. However, because the accident occurred in Texas, the plaintiff argued that Texas workers' compensation law – which does not protect a general contractor from suit – should apply. Until this case, Tennessee courts had not directly addressed this issue, so the federal court took a stab at predicting what the Tennessee Supreme Court would do if and when it is confronted with this issue. The federal court's decision will be persuasive precedent on the issue until the Supreme Court makes a ruling of its own some day.

The federal court granted AMEC's motion for summary judgment, holding that Tennessee workers' compensation law applied to the case, rather than Texas law. In doing so, it applied *Restatement (Second) of Conflict of Laws* § 184. That section reads as follows:

§ 184. Abolition of Right of Action for a Tort or Wrongful Death.

Recovery for tort or wrongful death will not be permitted in any state if the defendant is declared immune from such liability by the workmen's compensation statute of the state under which the defendant is required to provide insurance against the particular risk and under which: (a) the plaintiff has obtained an award for the injury; or (b) the plaintiff could have obtained an award for the injury, if this is the state: (1) where the injury occurred; or (2) where employment is principally located; or (3) where the employer supervised the employee's activities from a place of business in the state; or (4) whose local law governs the contract of employment under the rules of §§ 187-188 and 196.

Some states prohibit an employee of a subcontractor from suing a contractor – which they deem to be a "statutory employer" – and others do not. Section 184 provides a rule of law which guides courts who have to apply and justify conflicts of laws in workers' compensation subrogation scenarios involving the exclusive remedy rule and other rules of immunity similar to the exclusive remedy rule. As in this case, § 184 is usually applied with regard to a third party action against a general contractor or subcontractor. While § 185 appears to apply when there is a dispute over reimbursement of a workers' compensation carrier out of a successful third party recovery which has been effected by an injured employee, Section 184 appears to apply even before such a recovery, in determining whether the employee can sue, or is prohibited from suing due to the exclusive remedy rule or some other immunity.

The federal judge in *Scott* decided that the Supreme Court of Tennessee, when it ultimately is confronted with this issue, would apply *Restatement* § 184 in resolving the conflict of laws issue. He therefore held in this case that Scott could not sue AMEC because Tennessee workers' compensation benefits were paid, and therefore, the Tennessee workers' compensation law with regard to the exclusive remedy would be applied to this case. Scott was not able to sue AMEC as a result, and the judge granted summary judgment in AMEC's favor.

This case is significant for two reasons. First, Tennessee has now gone on record as adhering to the well-thought out rule set forth in § 184. This makes clear that the law of the state under whose system benefits are being paid will govern whether the plaintiff can pursue a third party action. Equally as important, however, is the fact that with this ruling, savvy workers' compensation carriers will know ahead of time that the decision as to which state's benefits to apply to a worker's compensation claim – assuming they have a choice – can make a black and white difference over the ability to recover those monies in a subsequent subrogation action, as well as a clear difference for the injured worker's ability to pursue a tortfeasor. Where the worker has a choice of states from which to claim benefits, a knowledgeable claims handler might want to steer the worker in the direction of accepting benefits under the laws of a state which will allow a third party action – as opposed to disallowing it. The worker will be eternally grateful along with his attorney. These decisions are often made by the worker and even his workers' compensation attorney with an eye toward which state offers the best benefits. But no amount of benefits will make up for the worker being prohibited from filing a third party action.

This is one example of a situation where the claimant, claimant's attorney, and carrier, all have one goal in mind – making a successful third party recovery. Any carrier should be happy to pay out \$150,000 in benefits paid out under the laws of a state which will allow a third party recovery, rather than \$135,000 in benefits paid out under the laws of a state that won't. Seeing that far into the future would make even Nostradamus proud.