

TORT NOTES
By: James J. Morici, Jr.

WORKERS COMPENSATION IMMUNITY NOT AVAILABLE TO PARENT CORPORATION ON THEORY OF “DIRECT PARTICIPATION LIABILITY”

The Illinois Supreme Court recently concluded that “direct participant liability” is a valid theory of recovery under Illinois law where there is evidence sufficient to prove that a parent company mandated an overall business and budgetary strategy and carried that strategy out by its own specific direction or authorization, surpassing the control exercised as a normal incident of ownership in disregard of the interests of the subsidiary. Citation Forsythe, et al. v. Clark USA, Inc. (Ill. Supreme Court Opinion filed February 16, 2007.)

On March 13, 1995, two mechanics were killed at a refinery owned and operated by Clark Refining & Marketing Company. The estates of each decedent received workers compensation benefits from Clark Refining and a third party lawsuit was filed against Clark Refining and other defendants. The appellant, Clark USA, was eventually added as a direct defendant. At the close of discovery, the trial court granted Clark USA’s motion for summary judgment. The Illinois Appellate Court remanded at 361Ill.App.3rd 642. Thereafter, the defendant petitioned the Illinois Supreme Court and was granted leave to appeal.

The Illinois Supreme Court considered, first, whether a parent company can be held liable under a theory of direct participant liability for controlling its subsidiaries budget in a way that led to a workplace accident and, second, if such a theory is recognized, whether the exclusive-remedy provision of the Workers Compensation Act (820 ILCS 305/5) immunizes a parent company from liability.

The Court noted in its analysis that it is general principle that a parent corporation is not liable for the acts of its subsidiaries. The Court, however, noted that the theory of “direct participant liability”, addressed in other states and throughout the federal courts, had not previously been addressed in Illinois.

After holding that the direct participant liability theory is valid under Illinois law, the Court addressed the defendant’s argument that it was immune under the applicable provisions of the Illinois Workers Compensation Act relative to exclusivity of remedy. McCormick v. Caterpillar Tractor Company, 85 Ill.2nd 352 (1981). The Court rejected defendant’s argument that the Plaintiff’s theory of liability should be treated as a piercing the corporate veil claim and that the immunities should apply. The Court held that direct participant liability as recognized, does not rest on piercing the corporate veil such that the liability of the subsidiary is the liability of the parent. On the contrary, that form of liability is asserted as its name suggests, for a parent’s direct participation superseding the discretion and interest of the subsidiary and creating conditions leading to the activity complained of.

Specifically relative to the facts in the case at bar, the Court found that the defendant created conditions within the Blue Island Refinery that led to the fire by directing or authorizing the manner in which Clark Refining cost cutting budget was instituted with no regard for the discretion and interest of Clark refining itself and found that a parent corporation can be held liable if, for its own benefit, it directs or authorized the manner in which its subsidiary budget is implemented, disregards the discretion and interests of the subsidiary and thereby creates dangerous conditions. In such situations, the parent defendant will not be protected by the exclusive remedy provision of the Workers Compensation Act.

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