



When Subs Get Hurt

by Quenda Behler Story

The law imposes a duty on general contractors to supervise their projects to ensure the safety of every worker on the job site, including subs and their employees. If your own employees are injured, you are responsible for their workers compensation claims, but if your sub or your sub's employee is injured because of your failure to supervise properly, you will be liable to them for negligence. This duty to supervise is nondelegable except in certain instances involving special skills. If you assign the task to someone else and they don't do it right, you can be liable for the consequences of their mistakes.

Employees' workers compensation claims are limited to medical costs and some lost wages. But if a sub or a sub's employees sue for negligence, they can ask for additional money for pain and suffering and punitive damages.

Case In Point

Consider this scenario based on an actual lawsuit. ABC General Contractors subcontracted with Ajax to erect scaffolding on a first-floor roof to provide access to the second story. ABC then brought in another sub to install windows on the second floor. Ajax had seated the scaffolding in a tarred surface — a detail ABC would have noticed had they inspected properly. When the mid-morning sun heated the tar, the scaffolding slipped, and the window sub's employee had a nasty fall.

The window sub's comp insurance paid the victim's medical bills and lost wages, but the insurance company then used its subrogation rights to sue ABC for failing to supervise properly. Subrogation means that a

person (in the eyes of the law, insurance companies are persons) who had to compensate an injured victim, stands in the place of the injured victim. Subrogation rights allow the compensating party to recover its money by suing anyone the victim could have sued for causing the injury.

The court's judgment, which forced ABC to reimburse the window sub's insurance company, in turn triggered subrogation rights for ABC. Using the "hold harmless" clause in its contract, ABC could sue Ajax for reimbursement — assuming Ajax had any money for ABC to collect.

ABC's own workers compensation insurance did not cover the victim's claim because the injured worker was not ABC's employee. But, depending on how the policy is drawn, ABC's liability insurance will pay, because that's what liability insurance is for: protection against claims for negligence.

A search for deep pockets. ABC was lucky that only the insurance company sued. The injured victim himself could have sued ABC for negligence and won more money than the window sub's insurance company did, because the insurance company could only collect what it had actually paid out.

In a situation like this one, where several parties may be liable, a victim's lawyer will probably sue the most "collectible" party. That's usually the general contractor, who is most likely to have insurance and tangible assets.

Check insurance certificates. When a sub fails to carry workers

compensation insurance, the general contractor will almost certainly be required, at a minimum, to pay the workers compensation claims of the sub's injured workers. The usual argument for making the general contractor pay is that part of the duty of inspection is to look at the sub's insurance certificates. A failure to do so can constitute negligence.

Pay careful attention to a sub's insurance certificate. Don't accept photocopied certificates: Have the sub's insurance company prepare a certificate explicitly for your company, and have them mail copies directly to you. Check the expiration date and the amount and type of coverage. Some builders also arrange to be listed as an "additional insured" on their sub's policies so that they will be informed if the policy is canceled or the coverage is changed.

Also, check on your own insurance coverage. You may need to add a rider to your own insurance policies extending coverage to your subs and their employees. Without such a rider, if a sub's injured employee files a claim against you, you may find your own workers comp insurance only covers your employees. And your liability coverage does not cover claims based on injuries occurring to workers on the job site.

Safety program for subs. The best solution to these problems, of course, is to not have the accident in the first place. Make it a part of your contract with the subcontractor that the sub and his or her employees will follow all your safety procedures. Require subs and their employees to participate in the safety training programs that are relevant to the work they are doing. Include your sub's employees in your safety meetings and log their attendance in your written safety program. Finally, inspect your subs' work regularly to ensure that they are following your safety procedures. ■

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