

November 2004

WORKER'S COMPENSATION UNRELATED WORKS EXCEPTION

By Ted Babbitt

In Taylor v. School Bd. of Brevard County, 29 Fla. L. Weekly S421 (Aug. 19, 2004), the Supreme Court severely limits the application of Fla. Stat. 440.11(1) in which the Legislature created an exception to workers' compensation immunity for "employees of the same employer when each is operating in the furtherance of the employer's business but are assigned primarily to unrelated works within private or public employment."

The Taylor case came to the Court on a clear conflict between the underlying Fifth District opinion of Taylor v. School Bd. of Brevard County, 790 So. 2d 1156 (Fla. 5th DCA 2001) and the Second District's opinion in Lopez v. Vilches, 734 So. 2d 1095 (Fla. 2nd DCA 1999). The decision in those two cases were clearly irreconcilable. In Lopez, the Second District held that a funeral home employee had the right to sue his fellow employees who maintained a van which malfunctioned while he was operating it and resulted in his injury. In Taylor, the Fifth District affirmed a summary judgment on behalf of the School Board for a bus driver injured when the wheelchair lift on the school bus he was operating fell on him because of negligence of the school bus mechanic.

The Supreme Court concluded that the major issue for decision was whether the unrelated works exception should be liberally or strictly construed. In deciding that question, the Court reasoned that in almost every case an argument could be made that different employees' jobs were always in some

sense different. At the same time, all employees of the same employer are involved in the task of carrying out the employer's business. Thus, virtually every workers' compensation injury could result in an issue as to whether the unrelated works exception applied or did not.

Reasoning that a liberal construction of the statute could very well eliminate the Legislative intent of providing a no-fault system of compensation for injured employees, the Court concludes that the unrelated works exception must be strictly construed.

. . . we conclude that the exception to this scheme for unrelated works should be applied only when it can clearly be demonstrated that a fellow employee whose actions caused the injury was engaged in works unrelated to the duties of the injured employee. While we would like to be more precise in providing guidance to those initially charged with deciding disputes based upon this exception, we are limited by our lack of precise knowledge of the legislative intent behind the exception and the reality that we could not hope to contemplate the myriad of factual circumstances that may give rise to the issue.

Justice Lewis, concurring in the result only, writes a lengthy and scholarly review of the law registering his concern that the holding of the majority gives little help to a trial court in making a decision as to when the unrelated works exception applies thus opening the door to numerous potential claims on this subject. While that is clearly true, the Supreme Court does make it clear that its decision is based upon the public policy of providing a workers' compensation system that rarely permits exceptions which undermine its purpose. At Page 422, the Court holds:

A contrary holding giving wide breadth to the rare exceptions to workers' compensation immunity would merely erode the purpose and function of the Workers' Compensation Law as established by the Legislature. We agree with the observations of the Fourth District in its recent decision in *Fitzgerald v. South Broward Hospital District*, 840 So. 2d 460, 463 (Fla. 4th DCA 2003), that the unrelated works exception should be narrowly construed because "[a]n expansive construction would obliterate the legislative intent that the system operate at 'a reasonable cost' to the employer" and that to decide otherwise would "erode the immunity provided under the worker's compensation law. . . leading to a profusion of suits and a proliferation of costs.

Thus it appears that the Supreme Court has not closed the door on the unrelated works exception but has provided instead a narrowing opening for its application.

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