

## Lessee Deemed Statutory Employer, Immune from Tort Liability by Pennsylvania Court

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*Construction and Surety Alert*

11.2.16

The Superior Court of Pennsylvania addressed whether a lessee can be shielded from tort liability as a statutory employer and thus, immune from civil liability under the Workers' Compensation Act. The court in *Doman v. Atlas America, Inc.* held that a primary contractor who leased property for the purposes of removing and drilling natural gas is a statutory employer under Section 302(a) of the Act and thus, entitled to tort immunity under Section 203 of the Act.

The defendant in *Doman* entered into a lease for the purpose of drilling, operating, producing, and removing oil and gas from the property. The defendant then contracted with a subcontractor to drill wells on the property. During the work, one of the drilling contractor's employees, the decedent, was fatally injured. The drilling contractor paid workers' compensation benefits to the decedent's family.

The decedent's estate initiated a wrongful death and survival action against the defendant. The defendant filed a motion for summary judgment alleging that it was a statutory employer under Section 302(a) of the Workers' Compensation Act and therefore, immune from tort liability. The trial court granted summary judgment in favor of the defendant. On appeal, the Superior Court addressed whether the defendant lessee and interim owner of the gas well where the decedent (employee of an independent contractor) was killed, was shielded from tort liability as a statutory employer and thus, immune from civil liability under the Act.

A contractor may be deemed a statutory employer if the requirements of either Section 302(a) have been satisfied. The relevant language is as follows:

SECTION 302(a):

A contractor who subcontracts all or any part of a contract and his insurer shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured its payment as provided for in this act. Any contractor or his insurer who shall become liable hereunder for such compensation may recover the amount thereof paid and any necessary expenses from the subcontractor primarily liable therefor.

For purposes of this subsection, a person who contracts with another (1) to have work performed consisting of (i) **the removal, excavation or drilling of soil, rock or minerals**, or (ii) the cutting or removal of timber from lands, or (2) to have work performed of a kind which is a regular or recurrent part of the business, occupation, profession or trade of such person shall be deemed a contractor, and such other person a subcontractor. This subsection shall not apply, however, to an owner or lessee of land principally used for agriculture who is not a covered employer under this act and who contracts for the removal of timber from such land.

77 P.S. § 461 (emphasis added).

The court applied Section 302(a) because the facts of the case involved the removal, excavation, and drilling of natural gas, and thus implicated the specialized definition in the statute. The decedent's estate argued that a lessee stands in the position of a property owner and therefore, should not be immune from suit. They cited *McDonald v. Levinson Steel Co.* for the proposition that property owners are not entitled to immunity as statutory employers. 153 A. 424 (Pa. 1930). The court rejected this argument citing the

Supreme Court of Pennsylvania's holding that "neither the *McDonald* test, nor a *per se* owner exclusion, applies under Section 302(a) of the Act." *Six L's Packing Co. v. Workmen's Comp. Appeal Bd.*, 44 A.3d, 1148, 1159 (Pa. 2012).

Based upon the plain language of Section 302(a), the court affirmed the trial court's determination that the defendant was the decedent's statutory employer. Consequently, the defendant was entitled to tort immunity even though the decedent's direct employer already paid workers' compensation benefits.

Interestingly, the court concluded its opinion noting that while their opinion was constrained by the Act and relevant case law, the statutory employer doctrine no longer serves a remedial purpose of the Act, following the 1974 amendments. The amendments allowed general contractors to be insulated from tort liability without paying workers' compensation benefits to injured employees of subcontractors. The court explained that general contractors enjoy a "windfall immunity shield" while worker safety is adversely affected due to the lack of consequences associated with accidents and injuries.

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