



Who Pays for Employees Injured on the Job?

by Michael J. Gelfand, Esq.

What happens if an employee of an association is injured while working for the association? Will the association's general liability policy cover the claim? Guess what—a general liability policy may not provide coverage for these claims.

This is why workers' compensation coverage is so important. In a consolidated decision, *Indian Harbor Insurance Company v. Williams*, 34 Fla. L. Weekly D186 (Fla. 4th DCA, January 21, 2009), a Florida appellate court recently ruled that a company which did not provide workers' compensation coverage for its employees was not entitled to coverage for negligence claims brought by employees injured within the course of their Florida employment.

Two employees brought separate negligence actions against their employer for injuries they sustained while working for the company. The company sought insurance coverage for these claims under its general liability policy.

The employer's commercial general liability insurance policy specifically excluded coverage for any obligation of the insured company under workers' compensation laws. Despite statutory requirements, the employer company did not maintain workers' compensation coverage for its employees. Two trial courts came to different results even though the facts were the same.

One trial court found the insurance policy unambiguous and ruled the employer was not entitled to coverage. The other trial court held the insurance policy did cover the employer for negligence claims brought by the employee. The Florida appellate court affirmed the trial court decision which denied insurance coverage for the employer company. The court noted that the claims would have been covered by workers' compensation coverage had the company met its Florida statutory obligation of obtaining workers' compensation insurance. Under the Florida workers' compensation law, workers' compensation is usually the exclusive remedy available to an employee injured as a result of the employer's negligence.

This decision is significant for Florida associations which have employees. It points out the importance of knowing what your insurance policies cover and what your policies exclude. Your general liability policy may exclude coverage for any claim covered under workers' compensation. Therefore, it is very important that associations which have employees carry proper workers' compensation insurance. In addition, contracts and

documentation obtained should be reviewed to ensure that contractors have proper coverage to reduce the potential of contractor employee claims.

Problems Caused By Easements

An easement is often created when a property owner allows access across his property to a neighboring property owner. What happens if the neighboring owner's property is subdivided into many different parcels resulting in many more neighbors all of whom seek to use the access easement originally intended to be used by one neighbor? This issue is raised by more communities as neighboring projects fail and new developers increase the density of projects.

There may be a way to prevent these additional parcel owners from using the easement. A Florida appellate court recently ruled that a trial court erred in finding that an easement agreement permitted the continued use of a right of way across a residential neighborhood.

The facts of *Terrill v. Coe*, 34 Fla. L. Weekly D4 (Fla. 5th DCA, December 24, 2008), indicate that before developing a residential subdivision known as Park at Wolf Branch Oak Subdivision, the owner of the property granted a non-exclusive easement across his property to his neighbor to the north. Thereafter, the owner of the property to the north sold that property to a buyer who intended to build a twenty-five unit development.

A member of the homeowners association for the southern, original, subdivision challenged the use of the easement by the twenty-five new parcel owners. The owner of the northern property argued that the easement was a valid access easement that contemplated the development of his property for a residential subdivision. The owner further maintained that there was nothing in the easement agreement that limited the easement's use to a single homeowner. The trial court agreed and ruled that the easement was for the benefit of the northern landowner and their successors in title "regardless of their number."

The Florida appellate court disagreed and reversed the decision of the trial court. The court pointed out that the general rule for all easements is that the burden, or use, must not be increased to any greater extent than reasonably necessary and contemplated at the time the easement was granted. The appellate court concluded that there remained a factual issue as to the contemplated use of the easement at the time that it was created.

"The fact that the easement in this case was to benefit the grantee's successors in title did not evidence an intent to permit a future increase in the burden to be placed on the servient estate," the court stated. "It simply confirmed that the easement was intended to be perpetual and not just for the benefit of [the owner of the northern property]." Thus, when an easement agreement permits the continued use of an easement across property, there may be a way to limit use when the neighboring property is subdivided into numerous parcels, increasing the number of people who would desire to use the easement.

Legislative Watch

Community associations are urged to monitor the Florida legislature's website concerning bills impacting associations and contacting legislators concerning matters of interest and concern. Access the website at www.leg.state.fl.us.

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