Heiman v. Workers' Compensation Appeals Board

Responsibility for Injury on Premises: Bypasses Board, Snares Community Manager

By Timothy Cline, CIRMS, Timothy Cline Insurance Agency, Inc. - Thursday, June 14, 2007

If an Association's rain gutters leak, you get them replaced. For a common interest development completing important tasks, like many maintenance projects is so "everyday" it's almost tedious. Typically, a Board will pass a resolution instructing the manager to get three bids, briefly discuss color, price and proposed installation date and then move on to other topics on its agenda.

The Board of Directors of Montana Villas HOA, a 24-unit condominium project located in Brentwood, probably had very little apprehension when they voted to accept the rain gutter proposal before them. Professionally managed by Robert Heiman (doing business as Pegasus Properties), the Board simply reviewed the bids brought to them by their professional community manager. Once a decision was made, Pegasus contracted with Rube's Rain Gutter Service and agreed to pay the vendor a total $1,050 for the installation. Mark Hruby, owner of Rube's Rain Gutter, assigned the job to Freddy Aguilera whom Hruby, in turn, agreed to pay $65 a day.

Unfortunately the work didn't go as planned.

Freddy's first day on the job ended in tragedy. An unsecured end of a metal rain gutter Freddy was holding connected with a high voltage line. His injuries were extremely serious and the recovery was long and arduous. Years later a workers' compensation judge ruled that Freddy Aguilera suffered 90% disability as a result of the incident.

In addition to the sad outcome for Mr. Aguilera, three gigantic problems with how this real-life scenario unfolded were realized: (1) It turns out Mark Hruby was an unlicensed contractor; (2) Rube's Rain Gutter Service maintained no Workers' Compensation coverage; and (3) S*tate Compensation Ins. Fund v. Workers' Comp. Appeals Board (1985) 40 Cal.3d 5,* creates a rebuttable presumption that a person performing services for which a license is required under state law is an employee rather than an independent contractor. In other words, when the HOA and Manager hired an unlicensed contractor to do the work for which a license is required (and no license exists) the HOA and Manager automatically become the injured worker's employer.

What makes this case different?

What appears to be unusual about this case is that the court ruled that Pegasus, not the HOA**,** was the sole employer for workers' compensation purposes. On petition, Pegasus attempted to argue that as an agent for the HOA it could not be held liable as a matter of law. Pegasus also argued, unsuccessfully, that the HOA was liable because the Board chose Hruby from among three bidders and because the HOA paid the bill for the repairs.

Pegasus qualified as an "employer" because it was Pegasus that reached an agreement with Hruby and it is Pegasus (not the HOA) that is deemed to be an employer under California Labor Code Section 2750.5.

Did the HOA dodge a bullet?

Any slight alterations in this case and it would be the HOA and not the manager who was deemed to be the employer. *California Labor Code* Section 3202 requires that workers' compensation law be "liberally construed by the courts with the purpose of extending their benefits..." and this consistently happens with questions of employment. If an "independent contractor" does not otherwise have workers' compensation insurance then the courts, believing they have an obligation to award benefits, may liberally construe the law to find that the common interest development was the employer.

What we learn from this case.

Could the above scenario occur at a common interest development? Absolutely. Despite the constant and well-intentioned warnings of cautious community managers, Boards of CID's often hastily hire vendors to do work and never think of confirming the existence of the vendor's workers' compensation policy and/or contractor's license.

California law requires ALL employers to maintain workers' compensation insurance - *California Labor Code*, Section 3600(a). Furthermore, nearly every set of CC&R's requires a Board of a common interest development to purchase workers' compensation coverage "to the extent necessary to comply with applicable law."

Despite these laws and regulations many Boards argue that Workers' Compensation coverage is unnecessary, ignorantly believing that an injured worker will "be covered somehow." Unfortunately nothing could be farther from the truth.

Boards and managers must take at least four steps:

1). Exercise caution and make certain a vendor has a valid contractor's license (if required by the State) for the specialty trade he/she is providing. To check the contractor's license status, go to the California Contractors License Board website at: www.cslb.ca.gov;

2). Require that the contractor provide evidence of Workers' Compensation coverage prior to stepping on to the premises;

3). Regardless of whether the HOA itself has employees the HOA should maintain its own workers' compensation policy. (For HOAs with no employees a "minimum audit payroll" policy will be issued); and

4). While it's not clear if the manager signed the contract in this particular case, Managers should avoid signing contracts on behalf of the Board of Directors. The Board of Directors should consider signing a contract only after the above requirements have been met and the contract has been reviewed by legal counsel.

As this example clearly illustrates, regardless of the size of the project – a minimum audit premium policy will protect the HOA should the Association be deemed to be the employer at the time of loss.

About the Author: Tim Cline, CIRMS, is President of Timothy Cline Insurance Agency, Inc. of Santa Monica. Tim is a past President of the Greater Los Angeles Chapter of Community Associations Institute, a former Chair of the CAI National Insurance and Risk Manager Professionals Networking Committee and currently President of the Los Angeles Chapter of the Independent Insurance Brokers and Agents Association and President-Elect of the Channel Islands Chapter of CAI.

This letter contains only a general description of coverage and is not a statement of contract. For a more detailed description of the policy conditions and exclusions, please consult the policy itself.