



Timothy Cline Insurance Agency

SPECIAL REPORT

**New case underscores
need for “no payroll”
workers’ compensation
policy for condominium
associations**

Luis Gonzalez was a member of a painting crew when, in September 2005, he was injured working on a three-story condominium association called “3515-17-19 Sacramento Street Homeowners Association” in San Francisco California. The HOA contracted with Bruce Parsley to paint the exterior of the building. The Covenants, Conditions and Restrictions (CC&Rs) of the HOA mandated that the HOA “shall acquire and maintain”... [w}orker’s compensation insurance to the extent necessary to comply with any applicable law.” However, when the HOA negotiated the painting contract with Parsley, he lied and said that he maintained both general liability insurance and workers’ compensation insurance. He also provided bogus documentation of non-existent insurance. The HOA relied on these false representations and “assumed” that since Parsley was insured he must also be licensed.

Luis Gonzales was suspended in a bosun’s chair and working near the top of the building’s interior light well when the chair’s rigging snapped and dropped him approximately 20 feet to the bottom of the shaft. He suffered serious injuries to both shoulders and numerous fractured bones. Parsley, the employer, was cited by Cal-OSHA for workplace safety violations.

Luis Gonzalez applied to the Workers’ Compensation Appeals Board since Parsley had no insurance. As determined by the Heiman case, the hiring of an unlicensed contractor who is injured, or whose employee is injured, while performing work for a HOA, creates an environment in which different employment relationships may arise with respect to “employer liability for workers’ compensation or tort damages.” (Heiman v. Workers’ Comp. Appeals Bd. (2007) 149 Cal.App.4th 724, 734 (Heiman).) In the seminal opinion, State Compensation Ins. Fund v. Workers’ Comp. Appeals Bd. (1985) 40 Cal.3d 5 (State Fund), the Supreme Court concluded that a homeowner who hired an unlicensed contractor, who was injured when he fell from a scaffold, was required to assume the status of “employer” for workers’ compensation liability because section 2750.5 requires an independent contractor be licensed as a matter of law.

“Any person performing any function or activity for which a [contractor’s] license is required . . . shall hold a valid contractor’s license as a condition of having independent contractor status.” (Fernandez v. Lawson (2003) 31 Cal.4th 31, 40 (conc. opn. of Brown, J.)) It is well established that the language of the statute “creates a rebuttable presumption affecting the burden of proof that a worker performing services for

which a contractor's license is required, or who is performing such services for a person who is required to obtain such a license, is an employee rather than an independent contractor."

The moral of this story: Even if an independent contractor lies to you about the existence of a contractor's license or workers' compensation coverage, it doesn't rule out the possibility that the common interest development could be found to be in an employee/employer relationship at the time of loss. A minimum audit payroll "no payroll" workers' compensation policy, in the name of the common interest development, acts as an effective safety net against these sorts of claims. Workers' compensation "no payroll" policies are readily available in California for minimum premiums as low as \$528 to \$606 per year*.

*Workers' compensation policies are subject to annual audit and premiums may exceed the quoted minimum premiums if uninsured or unlicensed contractors are reported at the conclusion of the policy period.



Timothy Cline, CIRMS

Timothy Cline Insurance Agency, Inc.

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.

© 2011 – TIMOTHY CLINE INSURANCE AGENCY, INC. – ALL RIGHTS RESERVED

For more information please visit us at: www.timothycline.com
or call us today at: (800) 966.9566