

Injured Asbestos Worker
Can Proceed with Lawsuit against Landowner

by

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The employee of an asbestos abatement contractor cannot sue the landowner for work-related injuries under the theory of premises liability. But he can proceed with his lawsuit based on general negligence.

The case is *Clyde Woodall v. Christian Hospital NE-NW*, 2015 WL 4456199, decided by the Missouri Court of Appeals for the Eastern District on July 21.

Clyde Woodall was working for Envirotech, Inc. doing asbestos abatement on a building owned by Christian Hospital NE-NW. Asbestos had to be removed from virtually every part of the building in preparation for its demolition.

Envirotech began the abatement on the top floor of the building and had discretion over how big an area to initially contain. While the work was ongoing, Christian Hospital retained ownership over the site and had the right to be in the building even though no medical services were being performed at the time.

Envirotech was not required to obtain Christian Hospital's permission to move the containment area. The sequence of the work was left to Envirotech's sole discretion. Envirotech employees, including Woodall, had free access to the entire building.

To facilitate equipment removal, Christian Hospital's employees often removed and reinstalled a handrail on the staircase leading to the basement. Christian Hospital's power plant operator testified in deposition that he had removed and reinstalled the handrail dozens of times and that it was part of his job to reinstall it if he noticed it was missing.

During a regular workday, there was a power outage when a generator provided by Christian Hospital ceased functioning. At Envirotech's direction, Woodall entered the boiler room in the building's basement to fix the problem. At that point in time, the handrail had been removed. While on the staircase, Woodall fell and was impaled on the exposed handrail support bracket. He sustained permanent injuries.

At the time of the accident, there was no asbestos being removed from the boiler room area. Woodall filed a workers' compensation claim and received a settlement for his injuries.

Woodall then filed a multi-count petition against Christian Hospital based on two theories: (1) premises liability and (2) general negligence. The trial court granted a motion for summary judgment in favor of Christian Hospital and Woodall appealed.

Regarding premises liability, Woodall had to show that his injury occurred due to a dangerous condition on Christian Hospital's property. Missouri recognizes three broad categories of premises liability cases; namely, those involving trespassers, licensees and invitees. There was no question in this case that Woodall was an invitee as he was an employee of an independent contractor (Envirotech) who had permission to use the premises.

The appellate court concluded that a landowner does not owe a duty to Woodall if the landowner relinquishes possession and control of the premises to an independent contractor who is doing construction. The court concluded that Envirotech directed Woodall into the basement.

The appellate court decided that Woodall was not under the supervision and control of Christian Hospital. The Eastern District affirmed the trial court's decision to dismiss the claim based on premises liability.

Regarding the negligence count, to prevail, Woodall had to show that Christian Hospital had a legal duty to provide a certain standard of care to Woodall, breached that duty, and the breach was the proximate cause of Woodall's resulting injury. The Eastern District concluded that when there are allegations about a landowner's negligent conduct rather than a condition of the property itself, a negligence claim may lie.

In this case, Woodall alleged general negligence in the handling of the stairway bracket, the presence of an inadequate electrical supply, and the failure to warn Woodall of possible hazards. Woodall argued on appeal that there were disputed facts about whether Christian Hospital negligently created a risk by removing the handrail and leaving it exposed.

The issue of control over the area was not relevant to Woodall's claim for negligence, the appellate court decided. The stairway, basement and boiler room were common work areas. Christian Hospital's employees worked in that area removing equipment and Envirotech's employees were scheduled to perform abatement work in the same area.

Since there were disputed factual questions about whether Christian Hospital was negligent, the Eastern District sent the case back to the trial court for

further action. The appellate court decided that the trial court erred in granting summary judgment in favor of Christian Hospital on the negligence claim.

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