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Minnesota Supreme Court Solidifies Common-Enterprise Doctrine with Ruling in Favor of Third Party

This week, the Minnesota Supreme Court held in Kelly v. Kraemer Construction, Inc., A15-1751 , that a general contractor hired to repair two bridges and the subcontractor it hired to assist with the project were engaged in a common enterprise for purposes of the election-of-remedies provision of the Minnesota Workers' Compensation Act ("MWCA")— Minn. Stat. § 176.061 . Because the two employers were engaged in a common enterprise, the court determined that the trustee for the next-of-kin of an employee of the general contractor killed during the project was precluded from bringing a negligence action against the subcontractor.

Minn. Stat. § 176.061, subds. 1 & 4 provides that when a worker is injured "under circumstances which create a legal liability for damages on the part of a party other than the employer . . . at the time of the injury," and the third party carries proper workers' compensation insurance and was engaged in a "common enterprise" with the employer, the MWCA mandates an election of remedies. The party seeking recovery "may proceed either at law against [the third] party to recover damages or against the employer for benefits, but not against both." Id. at subd. 1. The supreme court has long applied a three-part test to determine whether a common-enterprise exists: (1) the employers must be engaged on the same project and (2) their employees must be working together (common activity), (3) in such fashion that they are subject to the same or similar hazards. But the test has been applied inconsistently by the district courts and court of appeals over the years.

In Kelly , the general contractor hired a subcontractor to perform certain crane work that the general contractor did not have the equipment to perform. While installing concrete culverts, an employee of the general contractor was electrocuted. At the time, three other employees of the general contractor were working on the project along with two employees of the subcontractor—one operating the crane and a second oiling the crane, signaling the crane operator, and assisting with rigging the culver sections.

The deceased employee's family received workers' compensation benefits. They then commenced a wrongful-death action against the subcontractor, who moved for summary judgment based on the election-of-remedies provision of the MWCA. The district court denied the motion, but the court of appeals reversed in a 2-1 decision. In a 4-2 decision, the supreme court affirmed the court of appeals decision that all three elements of the common-enterprise doctrine were met.

As in most cases, the first element of the doctrine (same project) was not in dispute. And the supreme court unanimously agreed that the third element was met. Specifically, the court determined that the two crews were exposed to the same or similar hazards, including the risk of being hit by the load, struck by a piece of culvert if it broke apart, or injured by a failure of the crane cable or boom, as well as the risk of slipping in muddy conditions or being hurt by the bulldozer being used to

push the culvert sections into place.

It is the second element of the doctrine—the common activity or interdependence element—that led to the split decision. With respect to the second element, the majority determined that the two employers' crews were working together in a common activity because neither could have accomplished the day's goal of setting the culvert sections without the contemporaneous assistance of the other crew—i.e. their work was interdependent. Importantly, the court reasoned that although the two crews had distinct functions, those functions were interdependent and required close, contemporaneous coordination. The dissent, on the other hand, would have limited the doctrine to situations in which two employers put their employees into a common pool to perform the same function or task.

After years of conflicting decisions from the district courts and court of appeals, the supreme court's decision this week should help to clarify the scope of the common-enterprise doctrine for future cases. In particular, the decision reaffirms the broad reach of the doctrine, particularly in construction cases. It is important to note, however, that the doctrine is not without limits. See, e.g., LeDoux v. M.A. Mortenson Co., 835 N.W.2d 20, 21 (Minn. App. 2013) (“The features of a basic-oversight relationship between a general construction contractor and one of its subcontractors does not create the kind of “common enterprise” under Minnesota Statutes section 176.061, subdivisions 1–4, that bars a negligence action against the general contractor by a subcontractor's employee who received workers' compensation benefits for injuries sustained on the construction site.”). It is also important to note that the existence of a common enterprise does not preclude an employer from seeking subrogation from the negligent third party. Minn. Stat. § 176.061, subd. 3 .

If you have questions regarding the supreme court's decision or the common-enterprise doctrine in general, please contact Brian McSherry , Lance Meyer , or one of the other attorneys in our Liability Practice Group at (952.831.6544).