Abdulaziz, Grossbart & Rudman
NEWS
Emphasizing All Phases of Construction Law

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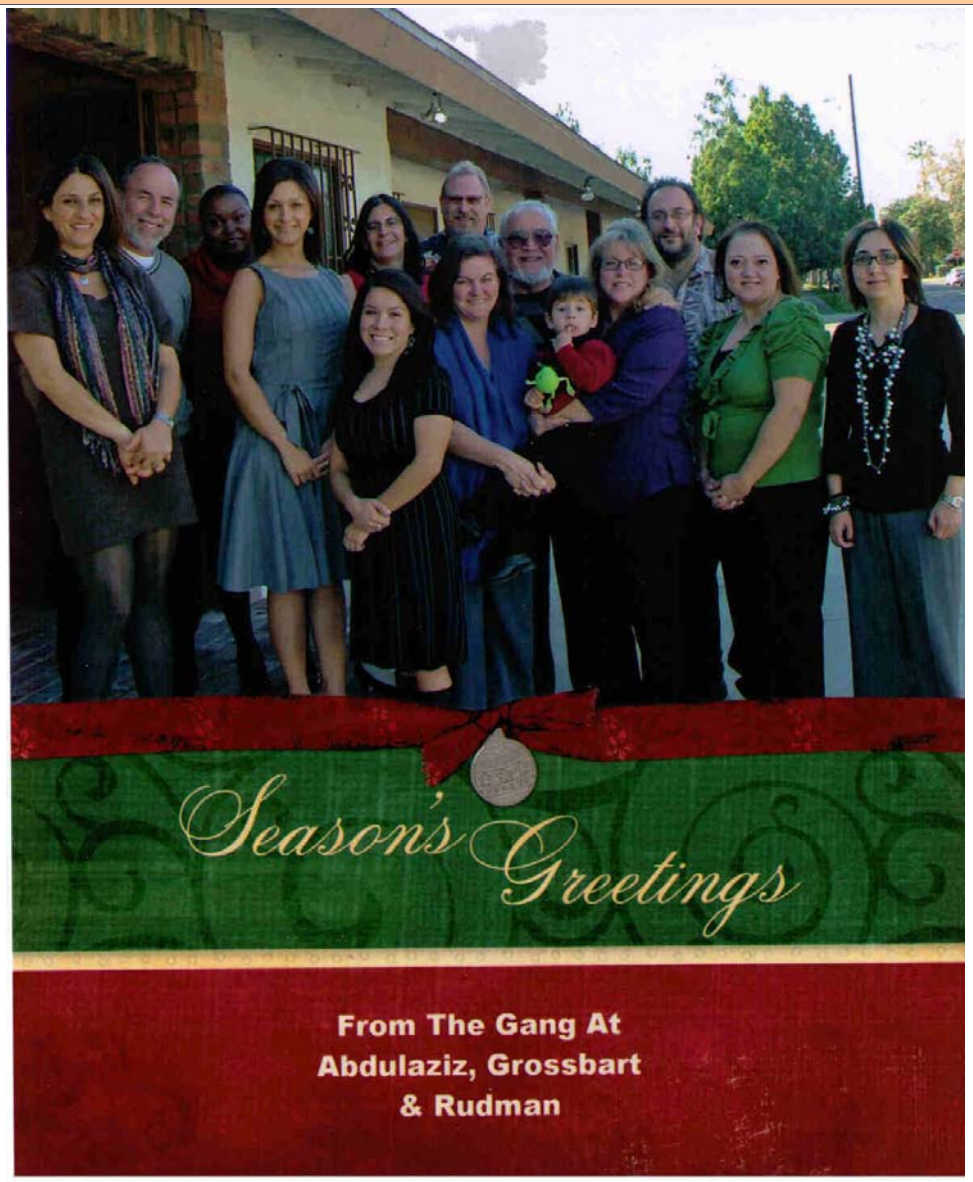

From all of us at Abdulaziz, Grossbart & Rudman, we would like to take this time to thank you for your friendship and business throughout the year. We wish you and yours a happy and healthy holiday season and a wonderful New Year!!!!

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RESPONSIBILITY FOR WORKERS' COMPENSATION INJURY

In workers' compensation actions, the injured employee does not have to show that his employer did anything wrong. Workers' compensation is a type of no fault insurance. If a worker is injured while working on the job, then the worker is entitled to compensation.

Richard Millard ("Millard") was an employee of a subcontractor called Apex Mechanical Systems, Inc. ("Apex"), a heating and air conditioning contractor. He was injured while working on a remodeling project supervised by Biosources, Inc. ("Biosources"), the prime contractor. Remember, Richard Millard was employed by the subcontractor, Apex.

Millard alleged that the electrician inadvertently tripped a circuit breaker three hours before turning out the light. Millard also pointed out that the lights would flicker and sometimes shut off and further alleged that this caused him to fall through the ceiling to the room below, injuring himself.

Millard sued the prime contractor (Biosource) for negligence. If successful, typically, a suit for negligence dealing with an injured employee would give the injured employee a great deal more money than just a workers' compensation claim. The employee would still have the right to his workers' compensation benefits. However, if the employee were successful in his civil suit, he would recover additional damages. In his complaint, Millard alleged that the prime contractor "retained control" over safety conditions and that control contributed to his injury.

However, the court disagreed. The court stated that since the prime contractor was not the employer of the injured employee, they would have to connect the electrician's accident dealing with Millard's fall in the afternoon, to the prime contractor. Millard did not prove that the prime contractor caused the lights to go out or flicker in the attic prior to his injury.

Therefore, Millard was entitled to workers' compensation, but not civil damages. The employee could not prove that his allegations against someone he had no contract with, caused the injury.

FUNNY BUSINESS SIGNS

In the front yard of a Funeral Home: "Drive Carefully, we'll wait."

On maternity room door: "Push. Push. Push."

In a veterinarian's waiting room: "Be back in 5 minutes. Sit! Stay!"

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LABOR AND EMPLOYMENT LAW

Typically, the employer and the employee have a working relationship which should be in writing. In this case, the employer provided the working environment including shifts and salaries. There was a case called *Parth v. Pomona Valley Hospital Medical Center* where the employees were provided with an option of working 12-hour shifts in exchange for a lower base hourly salary from those who worked 8-hour shifts, so that those who volunteered for the 12-hour shift schedule would receive about the same pay as they would on the 8-hour shift. The court held that this did not violate the Fair Labor Standards Act's overtime pay requirements.

RIDICULOUS EXCHANGES

ATTORNEY: What was the first thing your husband said to you that morning?
WITNESS: He said, "Where am I, Cathy?"
ATTORNEY: And why did that upset you?
WITNESS: My name is Susan!

ATTORNEY: The youngest son, the twenty-one-year old, how old is he?
WITNESS: Uh… he's twenty-one.

ATTORNEY: Doctor, before you performed the autopsy, did you check for a pulse, for blood pressure, for breathing?
DOCTOR: No.
ATTORNEY: So, then it is possible that the patient was alive when you began the autopsy?
DOCTOR: No.
ATTORNEY: How can you be so sure, Doctor?
DOCTOR: Because his brain was sitting on my desk in a jar.
ATTORNEY: I see, but could the patient have still been alive, nevertheless?
DOCTOR: Yes, it is possible that he could have been alive and practicing law!

Compliments of Disorder in the American Courts

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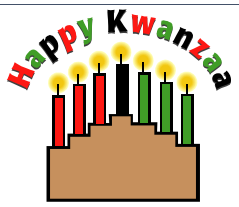

A TOW TRUCK IS A POWERFUL VEHICLE

This case dealt with special circumstances and a tow truck. The court determined that a tow truck was a powerful vehicle and could inflict more serious injury and damage than an ordinary vehicle when it was not properly controlled.

The defendant in this case left the vehicle unattended in a high crime area with the key in the ignition. Not surprisingly, the court held on appeal that when a thief stole the vehicle and injured the plaintiffs with the vehicle, a doctrine called "special circumstances" would come to play.

The rule is that absent "special circumstances" the owner of a motor vehicle has no duty to protect third persons against the possibility that a thief will steal the vehicle and injure others with it.

However, the "special circumstances" could now come into play. The essential question is whether special circumstances exist sufficiently so as to give rise to a duty of the owner.

In this case, a man, who was released on parole on the date of the incident (Bermudez), took a bus to Los Angeles and became intoxicated en route. Bermudez entered Sopp's truck service center yard through an open gate and stole the commercial tow truck in issue. Bermudez started the tow truck with the key, which had been left in the ignition, and drove the tow truck out of the service center yard, striking numerous vehicles parked along the street as he drove from the service center.

Shortly, thereafter, when Bermudez was approximately one mile from the tow yard, he drove the tow truck through a bus stop crowded with people, killing three and injuring numerous others. The truck finally stopped after hitting two utility poles.

Although the case was extremely long, I cannot believe that this case would not be upheld as "special circumstances." The Appellate Court overturned the trial court's decision and stated it was "special circumstances."

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HARASSMENT IN THE WORKPLACE

Both Federal and California law prohibits sexual harassment in the workplace. It is also an "unlawful employment practice" for an employer to refuse to hire, employ, or select for a training program leading to employment, any person because of that person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

The prohibited conduct ranges anywhere from expressly or impliedly conditioning employment benefits on submission to, or tolerance of, unwelcome sexual advances to the creation of a work environment that is "hostile or abusive to employees because of their sex." This again is true for California and Federal Law.

Although there are some differences, the wording of both the Federal and State laws, are intended to serve the same public policies.

Courts that have reviewed both the Federal and California discrimination laws hold that an employee seeking to prove sexual harassment based on no more than a few isolated incidents of harassing conduct must show that the conduct was "severe in the extreme." Therefore, a plaintiff who subjectively perceives the workplace as hostile will not prevail if a reasonable person would not think of the alleged harassment in the same manner or share the same perception. Isolated incidents of sexual horseplay are insufficient to be "actionable." This was based on a case of sexual harassment in a business relationship outside the workplace.

Sam Abdulaziz can be reached at Abdulaziz, Grossbart & Rudman, P.O. Box 15458, North Hollywood, CA 91615-5458; (818) 760-2000, Facsimile (818) 760-3908; or by E-Mail at info@agrlaw.net .
On the Internet, visit our Website at www.agrlaw.net