



Passion. Preparation. Persistence.

Volume 8, Issue 1

THE BASSETT BULLETIN™

CONTRACTING TO PROVIDE WORKERS' COMPENSATION INSURANCE COVERAGE

The San Antonio Appellate Court recently found that an employee of a subcontractor, who was covered by workers' compensation insurance, was also able to sue the property owner, general contractor, and other subcontractors for negligence and gross negligence. *Justin E. Briggs, Individually and Justin E. Briggs as Next Friend of Austin E. Briggs v. Toyota Manufacturing of Texas, et. al.*, 04-09-00516-CV (4th Cir. Dec. 19, 2010).

THE FACTS OF THE CASE

Prior to beginning construction on a Toyota assembly plant, Toyota Manufacturing developed an owner controlled insurance program ("OCIP"). The OCIP was developed to provide insurance, including workers' compensation insurance, for all workers at the construction site. Toyota Manufacturing provided an OCIP manual, which stated that the contractor and all levels of subcontractors would be insureds under the OCIP.

The OCIP manual listed Mitsui Sumitomo Group as Toyota Manufacturing's workers' compensation carrier as well as provided certificates of insurance to the contractor and each subcontractor. Mitsui served as the workers' compensation carrier and issued certificates of insurance to the subcontractors, including Briggs' employer.

Justin Briggs was injured in an explosion during the construction of the Toyota assembly plant. Following the accident, Briggs received more than \$400,000.00 in workers' compensation benefits from his employer through the OCIP from Toyota Manufacturing. Briggs brought suit against Toyota Manufacturing, the general contractor, and other subcontractors alleging negligence and gross negligence.

At the trial level, the Defendants filed a Joint Motion to Dismiss for Lack of Jurisdiction, citing the exclusive remedies provision of the Texas Workers' Compensation Act. The exclusive remedies provision provides protection from suit by an injured employee's common-law claims for on the job injuries, when an employer subscribes to workers' compensation. The Defendants claimed Briggs had received the workers' compensation coverage through the OCIP. The trial court granted the Defendants' motion and dismissed the suit.

On appeal, Briggs argued that the exclusive remedies provision of the Texas Workers' Compensation Act was not applicable because there was no evidence in the record of a written agreement between Toyota Manufacturing and the other Defendants by which Toyota Manufacturing agreed to provide workers' compensation coverage. After examining the evidence in the record and the applicable provisions of the Texas Workers' Compensation Act, the Appellate Court agreed and reversed the trial court's decision.

The Appellate Court examined the agreements and subcontracts that were part of the record but found they made no reference to the OCIP. According to the Texas Workers' Compensation Act, the general contractor and subcontractor must enter into a written agreement by which the general contractor provides workers' compensation insurance coverage to the subcontractor.

The Court also examined the OCIP manual relied upon by Toyota Manufacturing for its argument. The Court found, however, that the OCIP manual did not constitute an express written agreement for purposes of the Texas Workers' Compensation Act. The Court examined the language in the manual and determined it was not intended to be a contractual document. In addition, there was no evidence that the OCIP manual was filed with the insurance carrier for purposes of complying with the requirements of the Texas Workers' Compensation Act. The Court found that in order to use the defenses available under the Texas Workers' Compensation Act, an express written agreement is required.

In support of its argument that it provided workers' compensation insurance coverage to its subcontractors, Toyota Manufacturing also relied on an affidavit from Mitsui's regional claim manager, Dale Wimer, and deposition testimony from Toyota Manufacturing OCIP coordinator, Lauri Andrews. The Court examined both pieces of evidence and found that they each failed to conclusively prove the existence of a written agreement to provide workers' compensation coverage. The Court found that Wimer's affidavit failed to address whether a written agreement existed between Toyota Manufacturing and the subcontractors to provide workers' compensation coverage. Andrew's deposition testimony, the Court ruled, failed to offer proof of a written agreement.

The Court reversed the trial court's dismissal because Toyota Manufacturing failed to conclusively prove a written agreement existed between Toyota Manufacturing and the subcontractors.

HOW DOES THIS CASE AFFECT YOU?

In order to benefit from the legal defenses available pursuant to the Texas Workers' Compensation Act, the following procedures are recommended:

- ☆ Draft an express contract between the general contractor and all tiers of subcontractors under which the general contractor expressly agrees to provide workers' compensation to the subcontractor and the subcontractor's employees;
- ☆ Provide certificates of insurance to all subcontractors; and
- ☆ File the written agreement with the insurance carrier in order to comply with the requirements of the Texas Workers' Compensation Act. If the company is self-insured, the agreement should be filed with the Workers' Compensation Division.



The Bassett Firm

**Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769
www.thebassettfirm.com**

ATTORNEYS

- **MIKE H. BASSETT**
- **JENNIFER R. ASHMORE**
- **ROBERT L. MCGEE, JR.**
- **WILLIAM A. NEWMAN**
- **MICHAEL J. NOORDSY**
- **J. DANIEL OLIPHANT**
- **JOHN J. ROBERTS**
- **J. ANDREW ROBERTSON**
- **MATHEW SAMUEL**

Information regarding *The Bassett Bulletin*TM is available from Sabrina K. (skereta@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

*The Bassett Bulletin*TM is published twenty-six times a year, and is a complimentary publication of The Bassett Firm.
