I. Introduction

Following the "real estate bubble" burst, Florida has realized a resurgence of its real estate and construction industries. This renaissance has led to an uptick in job-related accidents, which are an inherent danger on construction sites. Employers look to Florida's workers' compensation statutes which, aside from certain exceptions, provide the exclusive remedies for work accidents.

Florida's workers' compensation system is designed "to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate a worker's return to gainful reemployment at a reasonable cost to the employer." [1] In exchange for access to workers' compensation benefits, injured workers give up their right to sue their employers for damages arising from job-related injuries.

An employer becomes immune to tort claims by an injured employee if it secures appropriate workers' compensation coverage. The legislature's intent was to give employers immunity from tort suits "except in the most egregious circumstances." [2] The focus of this article is to provide an outline of the complex interplay between workers' compensation immunity and Florida's construction industry.

II. Applying Workers' Compensation Immunity to Contractors and Subcontractors

The application of workers' compensation immunity to lawsuits arising from construction-related injuries becomes complicated by common industry practices and statutes which expand the scope of immunity. These complexities, in large part, are a byproduct of the web of contractual relationships present on a construction site. The statutory concepts of "vertical immunity" and "horizontal immunity" delineate, to some extent, which persons or entities can claim immunity in addition to an injured employee's direct employer.

A. Vertical Immunity

A "statutory employer" is entitled to vertical immunity. A vertical relationship exists when a contractor sublets any part(s) of its contracted work to a subcontractor. The contractor is deemed the "statutory employer" of the employees of the subcontractors involved in such work. [3] As a result of vertical immunity, a statutory employer is immune from claims by injured employees of its subcontractors and sub-subcontractors.

To qualify as a statutory employer, a contractor must ensure that workers' compensation coverage is maintained for its subcontractor's employees, whether through coverage obtained by the contractor or by its subcontractor. [4] A statutory employer has no obligation to make the actual payment of workers' compensation benefits to be able to assert immunity, as long as coverage is obtained. [5]
A contractor, in order to be deemed a statutory employer, must also have a contractual obligation which it then passes to another to perform. Considering this, courts in some cases have held that an owner/developer that builds structures as a commercial business venture and not as a result of any contractual obligations to a third-party, is not a statutory employer. [6]

An injured employee must satisfy a stringent exception to pierce a statutory employer’s vertical immunity. Courts have narrowly construed the applicability of this "intentional tort exception" to only the rarest, most outrageous of cases. [7] This stringent burden of proof is the same standard which an injured employee must meet to bring a viable tort action against his or her direct employer.

To pierce vertical immunity, an injured employee must establish by "clear and convincing evidence" that the statutory employer deliberately intended to injure the employee or that the statutory employer's conduct which was "virtually certain" to result in injury or death of the employee. [8] An injured employee's evidence of a non-intentional tort or negligence is not sufficient to circumvent vertical immunity.

**B. Horizontal Immunity:**

Horizontal immunity is "the statutory immunity for claims brought by an injured employee of one subcontractor against another subcontractor." [9] A horizontal relationship exists between subcontractors "employed within one and the same business or establishment," [10] but under different subcontracts, outside the vertical chain of a contractor to subcontractor.

A subcontractor is entitled to horizontal immunity from claims by another subcontractor's employee upon a finding that: (1) the subcontractor has secured workers' compensation insurance for its employees or the general contractor has secured such insurance on the subcontractor's behalf; (2) all of the employees of such general contractor and subcontractor(s) are providing services on the same project or contract work; and (3) the subcontractor's own gross negligence is not the major contributing cause of the injury. [11]

When the preceding three requirements are established, a subcontractor also has immunity against claims by injured employees of a general contractor. This immunity will insulate a subcontractor from liability unless the injured employee can establish the subcontractor's gross negligence [12] or an absence of either of the two remaining statutory requirements. Although the relationship between an injured employee of a general contractor and a subcontractor does not, on the surface, appear to be horizontal in the same way that the relationship between fellow subcontractors working on the same project is, the statute nonetheless treats the relationship as horizontal. This statutory distinction makes sense when considering that a subcontractor is not obligated to ensure that employees of a fellow subcontractor or employees of the general contractor are provided with workers' compensation coverage.
The gross negligence standard is difficult to satisfy; however, it is less stringent than an injured worker's burden for the intentional tort exception. To prove a subcontractor's gross negligence, an injured worker must show: (1) circumstances presenting an imminent or clear and present danger amounting to a more than normal or usual peril; (2) the subcontractor's knowledge or awareness of the imminent danger; (3) an act or omission by the subcontractor that evidences a conscious disregard of the consequences." [13]

III. Applying Workers' Compensation Immunity to Corporate Supervisor and Design Professionals

If an employer has immunity, the employer's corporate officers and supervisors are immune from an injured employee's claims. The same immunity provisions enjoyed by an employer extend to "any sole proprietor, partner, corporate officer or director, supervisor, or other person who in the course and scope of his or her duties acts in a managerial or policymaking capacity and the conduct which caused the alleged injury arose within the course and scope of said managerial or policymaking duties and was not a violation of a law, whether or not a violation was charged, for which the maximum penalty which may be imposed does not exceed 60 days' imprisonment." [14]

A corporate supervisor will be immune from suits resulting from work injuries unless it can be shown that the supervisor's negligence was tantamount to "culpable negligence." [15] Courts have defined culpable negligence as conduct characterized by "a gross and flagrant character which evinces a reckless disregard for the safety of others," and constituting "an entire want of care which raises a presumption of indifference to consequences." [16]

Architects, professional engineers, landscape architects, and other construction design professionals have immunity from claims by injured construction workers in specific circumstances. A construction design professional has immunity from liability for an employee's injuries resulting from an employer's non-compliance with safety standards on the construction project; however, this immunity will not apply if the construction design professional contractually assumed the responsibility for safety practices. [17] This statutory immunity does not shield a construction design professional from claims resulting from a construction design professional's negligent preparation of design plans or specifications. [18]

IV. Conclusion

An application of Florida's workers' compensation immunity to construction-related accidents can be difficult to navigate. Still, the legislature's intent is abundantly clear. If an employer fulfills its obligations to secure coverage, worker's compensation benefits become an injured worker's exclusive remedy with only limited statutory exceptions.
An immunity defense can be a potent strategy in litigation. If an immunity defense is clear upon a review of a complaint, the defense may be raised by a motion to dismiss at the pleading stage. [19] However, an immunity defense is generally better suited for a motion for summary judgment, as an employer will likely need to submit facts and evidence outside of the pleadings. An order denying a motion for summary judgment based on worker's compensation immunity is immediately appealable if the order is based on a finding that the defendant is not entitled to assert a workers' compensation immunity defense as a matter of law; however, the order is not immediately appealable if the trial court denies the motion for summary judgment because the facts supporting the immunity defense are in dispute. [20]

A defensive strategy for asserting a workers' compensation immunity defense should be addressed and developed early in litigation. To do so, an understanding of the laws governing this immunity is needed to evaluate the particular factual circumstances of an accident and improve the efficacy of an immunity defense.


[4] Fred G. Wright, Inc. v. Edwards, 642 So. 2d 808, 809 (Fla. 2d DCA 1994) (holding that a general contractor is entitled to vertical immunity if its subcontractor provides workers' compensation benefits to the subcontractor's injured employee).


[7] See, e.g., R.L. Haines Const., LLC v. Santamaria, 161 So. 3d 528, 530 (Fla. 5th DCA 2014); Bakerman, 961 So. 2d at 262.

[8] List Indus., Inc. v. Dalien, 107 So. 3d 470 (Fla. 4th DCA 2013); Fla. Stat. sec. 440.11(1)(b) (2013) (delineating what is needed to satisfy the intentional tort exception).

[9] Ramcharitar v. Derosins, 35 So. 3d 94, 95 (Fla. 3d DCA 2010).

[10] Ciceron v. Sunbelt Rentals, Inc, 163 So. 3d 609, 611 (Fla. 4th DCA 2015) (holding that an equipment rental company did not qualify as a "subcontractor" entitled to horizontal immunity because no subcontractor on the job sublet to it any work which a subcontractor had contracted with the general contractor to perform).


[18] Id.
