

EMPLOYERS MUST REPORT HAZARDOUS CONDITIONS CREATED BY OTHERS AT MULTI-EMPLOYER WORKPLACES OR FACE LIABILITY FOR RESULTING INJURIES

**SUAREZ V. PACIFIC NORTHSTAR MECHANICAL, INC.
No. A121349 (CAL.APP. 4TH) DEC. 18, 2009**

HOLDING

On December 18, 2009, in *Suarez v. Pacific Northstar Mechanical, Inc.*, the California Court of Appeals created a duty mandating employers at multi-employer construction sites to report hazards at the site to which its employees have been exposed. The duty applies to all hazards at the site whether or not the employer installed, worked on or was otherwise responsible for the condition. Under California law, an employer who breaches such a duty is liable in tort.

SIGNIFICANCE

The significance of this case is straightforward, yet monumental. An employer at a multi-employer worksite can now be held liable for injuries to employees of other employers. Liability can arise even if an employer did not work with, on, or near the hazardous component. The crucial question is whether an employee was injured by a seemingly unknown hazard. With this case in mind, the lesson moving forward is simple: if your employees are injured by a non-obvious hazard on a worksite, you must report the hazard to any and all employers with the ability to remedy the problem. Failure to report the hazard, regardless of whether you worked with or contributed to the condition, constitutes actionable negligence. Any employee injured by an unreported hazard, whether employed by you or not, can sue for negligence.

BACKGROUND FACTS

All Bay Contractors, Inc. (All Bay) was hired as the general contractor for a tenant improvement project. All Bay hired Pacific Northstar Mechanical, Inc. (PNM) to install the heating, ventilation, and air conditioning components for the project.

In late December 2004, a PNM employee contacted, and received a minor electrical shock from, an ungrounded electrical fixture. PNM did not report the incident or condition to anyone, including All Bay. PNM also did nothing to fix the problem or warn others of the hazard. PNM did not perform work on, or related to, the ungrounded fixture; their contact was completely coincidental.

On January 14, 2005, Miguel Suarez and Luis Avila were working in the room containing the ungrounded fixture.

Suarez climbed a ladder in order to make marks on the ceiling. Avila stayed on the floor in order to steady the ladder. Suarez inadvertently touched the fixture. He immediately received an electric shock, fell off the ladder and landed on Avila. Both men suffered serious injuries.

Suarez and Avila sued the owner of the property on which the project was located. Nearly eighteen months later, they found out about PNM's episode with the ungrounded fixture and substituted PNM as a fictitious defendant. The complaint alleged two causes of action: premises liability and negligence.

ANALYSIS

The court dismissed the premises liability action against PNM, leaving negligence as the sole cause of action against them. The court explored three avenues to impose a duty to report upon PNM: the common law, the contract between All Bay and PNM, and workplace safety statutes.

Ultimately, the court ruled that PNM did not owe a common law duty to Suarez and Avila because an employer at a multi-employer worksite has no special relationship with the employees of another employer. Similarly, a contractually imposed duty was inappropriate because the ungrounded fixture was not created during the project and PNM never used the ungrounded fixture while performing its work on the project.

Finally, the court turned to California workplace safety statutes. Relying upon California Labor Code sections 6304.5 and 6400, along with California-OSHA regulation 336.11, the court imposed a duty to report upon PNM. The court ruled that these provisions impose a duty to report on each employer at a multi-employer worksite. The employer must report all non-obvious hazards, learned of because its employees were exposed to or injured by them during their work at a project, even if the employer in question did not create the hazard. Furthermore, the employer must notify any employer at the site that is in a position to rectify the hazard. A breach of this duty renders the offending employer citable to California-OSHA, but also constitutes actionable negligence. An employee injured following the breach may sue the offending employer whether or not it is his employer.