



Construction Litigation Team Secures Complete Summary Judgment Victory—Liability Case Dismissed Based on Collateral Estoppel Due To Workers' Compensation Findings

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John Sparling, Scott Shapiro and Danielle Hoffmann of the Cullen and Dykman Construction Litigation Team recently won a pre-answer summary judgment motion dismissing a multi-million-dollar construction accident case. Collateral estoppel based on workers' compensation case findings is one of the most significant and growing defenses available to limit New York Labor Law Liability. Cullen and Dykman's construction group is leading the charge in developing this defense.

This case involved a claimant who was working on a road construction project on the Bruckner Expressway in the Bronx. The claimant alleged that his incident occurred when he was carrying rebar and he slipped and fell on concrete blankets resulting in injuries to his head, neck, right shoulder, elbow and lumbar spine. He claimed he would never work again. Significant investigation and work-up, however, revealed that the workers' compensation board had denied claimant's application for benefits and decision and specifically held that the claimant did not sustain any injuries that arose out of or occurred in the course of his employment at the construction project. Rather than litigate the case in discovery, we immediately moved for summary judgment before the issue was joined saving significant defense costs.

In order for collateral estoppel to apply, there has to have been the same issue necessarily decided in prior litigation at which the claimant had a full and fair opportunity to litigate the decided issue. Collateral estoppel can also apply to determinations of administrative agencies and the workers' compensation board findings. Very careful analysis is needed to make sure the opportunity to defeat a case or some part of it is not overlooked.

In granting summary judgment, the Court of Claims agreed with our arguments and relied on the workers' compensation decision which disallowed the claim holding that the claimant did not sustain any injuries that arose out of or occurred in the course of his employment on the date of the alleged incident. The Court further agreed that as that question was conclusively determined against him in the workers' compensation proceeding, the collateral estoppel doctrine prevented relitigation of that issue in the liability case. The Court also determined that claimant did have a full and fair opportunity to litigate that issue as he was represented by counsel, had the opportunity to testify, to call and cross-examine witnesses, and to offer medical records to

support his claim of having been injured. The claimant failed to show that the procedures employed in resolving his workers' compensation benefits deprived him of the opportunity to establish he suffered an injury on the date of incident and collateral estoppel applies precluding the claimant from offering proof of that issue, an essential element of his negligence claim in this Court.

Associate Danielle Hoffmann of the Construction Litigation Team handled the laboring oar in winning the motion.

Practices

- Construction Litigation

Attorneys

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