

## WORKER'S COMPENSATION YEAR IN REVIEW: AN UPDATE ON RECENT JUDICIAL DECISIONS

Ann H. Stewart\*

---

The Indiana Worker's Compensation Act<sup>1</sup> provides compensation and benefits to employees who suffer injuries that occur by accident arising out of and in the course of their employment.<sup>2</sup> The employee has the burden of proving each and every element of the claim in order to be entitled to statutory compensation or benefits.<sup>3</sup>

The Worker's Compensation Board of Indiana has exclusive jurisdiction to determine whether an employee is entitled to statutory compensation and benefits for an injury arising out of and in the course of employment. These determinations are fact-sensitive and often depend on the circumstances of each case. Evidence related to these claims is first heard by a single hearing member, judges assigned to districts within the state, and then by the seven judges of the full Worker's Compensation Board (the "Board"), if appealed. If either party disagrees with the full Board's decision, it appeals directly to the Indiana Court of Appeals. Below is a review of the recent Indiana Court of Appeals and an Indiana Supreme Court decision interpreting the Indiana Worker's Compensation Act's provisions.

### I. ARISING OUT OF EMPLOYMENT

The *arising out of* element of a worker's compensation claim requires a causal connection between the employment and the injury. The causal connection is established or defeated by a consideration of the facts related to the claim and the various risks involved.

#### SPARKS V. HARBORSIDE NURSING HOME<sup>4</sup>

Sparks worked for Harborside Nursing Home. She suffered injuries from falls in 2007 and 2008 while she was at work. After the 2007 fall, she received treatment for back pain and returned to work within a few days with no restrictions. Several months later, a follow-up physical revealed that

---

\* Ms. Stewart is Of Counsel in the Indianapolis office of Ice Miller and is a member of the Defense Trial Counsel of Indiana.

<sup>1</sup> IND. CODE §§ 22-3-1-1 through 22-7-2-28.

<sup>2</sup> IND. CODE § 22-3-2-2.

<sup>3</sup> *Id.*

<sup>4</sup> 7 N.E.3d 1027, *unpub.* (Ind. Ct. App. 2014).

she had no continuing problems from the incident. Sparks applied for and received additional treatment and statutory benefits until June 2007.

Nearly one year later, on February 23, 2008, Sparks fell again and suffered injuries when her knee gave out as she walked down a hallway at work. Harborside denied this claim. Sparks underwent back surgery several months after the fall. She filed an Application for Adjustment of Claim (an “application”) in June 2008, claiming the condition that prompted her 2008 back surgery was related to the first fall (the accepted 2007 claim). The single hearing member denied the application, and the full Board affirmed. The court of appeals also affirmed, finding the record supported the Board’s decision that the surgery following the second fall was not compensable. The court emphasized that the medical records following the first fall showed no continuing symptoms or residual problems and no complaints of injury to her knee. Rather, the medical records showed that Sparks suffered from preexisting, longstanding degenerative conditions, which caused the 2008 fall. Therefore, the court found the need for the 2008 surgery was unrelated to the 2007 claim.

In addition, the court affirmed the Board’s decision that the second fall did not arise out of employment. Sparks alleged the injury “was definitely work related” because she said the fall occurred when she turned to respond to someone. The Board declined to use the neutral risk doctrine, holding that Sparks’s knee giving out on her had no occupational relationship to her work, other than that she was at work when it occurred. She was simply “walking down the hallway” and “not doing anything” when the fall occurred. The court likewise affirmed the Board’s decision to reject Sparks’s attempts to create a relationship between her work activities and her fall.

SEACAT V. GOODRICH CORP.<sup>5</sup>

Goodrich instituted a stretching program to combat increased muscular strains among its employees. Seacat, among others, participated in a voluntary afternoon stretch break and then engaged in other activities, including playing games. Seacat injured his ankle while playing hacky sack but argued it was part of the employer-sponsored stretch break. The Board denied the claim, determining that Seacat’s injury did not arise out of employment because he was engaged in horseplay at the time of his accident.

The court of appeals affirmed the Board’s denial, refusing to disturb the hearing member’s factual findings. It is important to note that the court in its analysis repeated that the burden of proving every element of a statutory claim rests on the employee. Since Seacat did not carry his burden of proving a causal nexus between the injury and employment, the court did not need to address whether the injury occurred in the course of employment.

---

<sup>5</sup> 11 N.E.3d 572, *unpub.* (Ind. Ct. App. 2014).

2015]

*Worker's Compensation Year in Review*

119

## II. IN THE COURSE OF EMPLOYMENT

The *in the course of employment* element of the claim considers the time and place the accident occurred and whether it was incidental to the employment.

THOMPSON V. YORK CHRYSLER<sup>6</sup>

Thompson's widow filed a claim against his employer, based on aggravation of mood disorder and depression, which she alleged were the result of a physical altercation at work. (His death was unrelated to the claimed work injury.) At hearing, the parties stipulated that there was one altercation where two employees yelled at one another about parts in the auto shop, with another employee berating Thompson. The second altercation ended with Thompson falling. Thompson initially received treatment through the hospital and his personal physician. Eight months later he sought counseling services.

The single hearing member held that Thompson's widow failed to carry her burden of proving the altercation arose out of employment, stating it was unclear which employee was the aggressor. The Board also held that she had failed to prove that the conduct occurred in the course of employment, finding that while the "initial exchange" was about auto parts, the "later exchange," which caused the fall, was unrelated to the employment. The full Board affirmed both holdings.

On appeal, the court of appeals reversed on both counts. It held that the uncontroverted evidence showed that the altercation occurred in York's shop as Thompson was leaving work, and therefore, it happened in the course of employment. It also reversed on the *arising out of* element, calling into question the Board's findings regarding an "initial exchange" and "later exchange." The Board had accepted the parties' stipulation that there had been only one altercation, so the court found that it was improper for the Board to find contrary to that stipulation. Further, the court determined the evidence was undisputed that the other employee verbally assaulted Thompson, making the other employee the initial aggressor. Thus, the court reversed and remanded for a determination of benefits.

## III. EVIDENCE, BURDEN OF PROOF

HARROLD V. L&D MAILMASTERS<sup>7</sup>

Harrold reported back and hip pain while she worked on a project at a printing center. L&D accepted the injury (deeming it to have occurred in the course of her employment) and provided medical care from several physicians. The authorized treating physician determined Harrold suffered

<sup>6</sup> 999 N.E.2d 446 (Ind. Ct. App. 2013).

<sup>7</sup> 5 N.E.3d 810, *unpub.* (Ind. Ct. App. 2014).

from degenerative back disease that was aggravated by a repetitive lumbar strain. Harrold declined several recommendations from physicians to have injections. The medical records reflect that Harrold mentioned that she might seek surgical options outside the realm of worker's compensation.

The authorized treating physician found Harrold to be at maximum medical improvement (MMI) and her temporary total disability payments ended shortly afterward. Harrold disagreed with the physician's determination. She filed an application and obtained a Board-ordered independent medical evaluation (IME). The IME physician also concluded Harrold's work injuries had reached MMI.

Harrold subsequently sought unauthorized medical care and evaluations. She returned to the initial authorized treating physician and told him that one of the physicians recommended surgery (which was inaccurate). She then pursued fusion surgery without authorization from L&D or its worker's compensation insurance carrier. L&D obtained a physician opinion that concluded that the fusion surgery was unnecessary and was unrelated to her accident at work. That physician also agreed that Harrold had reached MMI before her unauthorized medical care, as opined by the initial authorized physician.

The single hearing member determined Harrold's work injury had reached MMI and that the subsequent treatment was unrelated to the work accident. The full Board affirmed. The court of appeals affirmed, finding that Harrold had failed to carry her burden of proving "other good reason"<sup>8</sup> to pursue surgery. The court therefore found that L&D was not required to pay for the surgery and unauthorized medical care. Specifically, the court determined that (1) Harrold did not seek prior approval and planned to explore surgical options outside worker's compensation; (2) Harrold could not claim the treatment provided was inadequate when she did not avail herself of the treatment offered; and (3) Harrold's statements to the unauthorized physician regarding surgery were inconsistent with the treatment recommendations made by the authorized physician. Based on these conclusions, the court found that the Board did not err in denying Harrold's claim for surgery.

#### KEITH V. INDIANA BELL<sup>9</sup>

Keith, a connection technician for Indiana Bell, suffered lower back pain while pulling himself out of a client's crawl space. He had several surgeries to correct herniated disks. After he had a spinal cord stimulator permanently implanted, the authorized treating physician determined he had reached maximum medical improvement.

<sup>8</sup> Daugherty v. Industrial Contracting & Erecting, 802 N.E.2d 912 (Ind. 2004) (interpreting IND. CODE § 22-3-3-4(d)).

<sup>9</sup> 6 N.E.3d 509, *unpub.* (Ind. Ct. App. 2014).

2015]

*Worker's Compensation Year in Review*

121

Indiana Bell obtained a medical opinion that Keith could return to gainful employment. Keith disagreed with this assessment and obtained a Board-ordered independent medical evaluation. The Board IME determined Keith was at MMI and recommended an evaluation to address his impairment and ability to return to work. A physical medicine and rehabilitation specialist determined Keith could return to work with limitations.

Keith obtained a report from a vocational rehabilitation specialist. The specialist interviewed Keith and reviewed a selection of his medical records and determined that he was unable to return to work. Keith then filed an application with the Board.

The single hearing member determined that Keith had failed to meet his burden of proving that he was permanently and totally disabled. She discounted the specialist's opinion because Keith had provided an inaccurate history and the specialist had failed to review all the pertinent medical information. The court of appeals declined Keith's request to reweigh the evidence and affirmed the Board's decision that he failed to meet his burden of proving permanent total disability.

MARION COUNTY HEALTH DEPT. V. HILL<sup>10</sup>

Hill, an employee of the Marion County Health Department, had a compensable back injury but subsequently obtained surgery without approval from either the employer or the Board. Hill argued that he sought and received the treatment because the two authorized physicians' treatment had not "made him any better." The Health Department argued that the surgery addressed degenerative conditions at other levels and that it did not help him since he was still taking pain medication. The full Board affirmed the single hearing member's award determining that the employer must pay the costs of all medical treatment, including the unauthorized surgery. The court of appeals affirmed, noting that although prior approval is usually necessary for medical treatment, in this case Hill proved the "other good reason"<sup>11</sup> exception for receiving treatment without approval.

Specifically, the court rejected the Health Department's arguments that Hill did not undergo the surgery in good faith, did not prove the prior authorized care was inadequate, and did not prove that the back surgery was medically reasonable and necessary. The court reasoned that because Hill still complained of pain when the authorized physician released him from care, and an MRI supported Hill's complaints, Hill had satisfied his burden of proving he had "good reason" for obtaining care without prior approval. Therefore, the court affirmed the Board's decision.

<sup>10</sup> 15 N.E.3d 688, *unpub.* (Ind. Ct. App. 2014).

<sup>11</sup> Daugherty v. Industrial Contracting & Erecting, 802 N.E.2d 912 (Ind. 2004) (interpreting IND. CODE § 22-3-3-4(d)).

RAGON V. ELI LILLY & CO.<sup>12</sup>

Ragon worked for Eli Lilly in different capacities for thirty years, including time in several trade shops during his early employment, and more recently performing general maintenance in the laboratory. He struggled with respiratory problems and eventually was diagnosed with obstructive pulmonary disease and pulmonary fibrosis. Ragon filed an Occupational Diseases Act claim based on alleged exposure to asbestos, which Eli Lilly denied.

The single hearing member held that Ragon failed to meet his burden of proving his pulmonary fibrosis was caused by exposure to asbestos or that he suffered from asbestosis, and that the theory of the case relied heavily on the veracity of Ragon's own representations of the nature, extent, and duration of his alleged asbestos exposure. The single hearing member found that Ragon was not a credible witness based on inaccurate historical remarks, so she ruled he had not met his burden of proof. The full Board affirmed, as did the court of appeals.

The court noted that the Board acknowledged Ragon's exposure to asbestos but that Ragon had failed to prove that the "nature, extent, and duration" of his exposure while working for Eli Lilly was sufficient to cause his condition. It characterized Ragon's appeal as a request for the court to judge the credibility of witnesses and reweigh the medical evidence before the Board, which the court held it is not permitted to do. The court repeated that Ragon had the burden of proving every element of a claim to recover under the Occupational Diseases Act and concluded he did not meet his burden of proving he suffered from asbestosis or had an occupational exposure to airborne asbestos fibers.

FRONTLINE NATIONAL, LLC, V. STEINHAUER<sup>13</sup>

Steinhauer, a contract LPN at Camp Atterbury, alleged she suffered an injury to her foot while walking across a gravel lot. She testified that she reported the incident and completed an incident report; however, the incident report was not produced at hearing. Steinhauer did suffer from preexisting fasciitis and Achilles tendonitis, which were symptomatic for three years, and she complained of chronic pain. Frontline denied her claim due to these preexisting conditions and late reporting.

The single hearing member concluded that Steinhauer's injury occurred in the course of and arose out of employment with Frontline based on the credibility of the hearing testimony. After the hearing, Frontline informed the single hearing member that it obtained documents that purported to show that the supervisor to whom Steinhauer said she reported the incident was not working on the date of injury. The single hearing member refused

<sup>12</sup> 20 N.E.3d 604, *unpub.* (Ind. Ct. App. 2014).

<sup>13</sup> 23 N.E.3d 859, *unpub.* (Ind. Ct. App. 2014).

2015]

*Worker's Compensation Year in Review*

123

to consider this supplemental evidence, which was readily available at the time of hearing. The full Board also refused to consider the supplemental evidence and adopted and affirmed the single hearing member's findings. The court of appeals determined that the Board did not abuse its discretion when it denied Frontline's attempt to backfill the record. It further found that Frontline was not prejudiced by Steinhauer's alleged late notice of her injury.

WARD V. UNIVERSITY OF NOTRE DAME<sup>14</sup>

Ward worked in food service at the university's dining hall. She suffered an injury to her foot and ankle when she slipped on the floor. The university accepted the claim and provided medical care and statutory benefits until the authorized treating physician found she had reached maximum medical improvement. Ward disputed this finding and alleged she suffered from reflex sympathetic dystrophy (RSD) or chronic regional pain syndrome (CRPS) as a result of her ankle surgery. Ward obtained a Board-ordered independent medical examination, which concluded her injuries had reached MMI and that she did not suffer from CRPS. Ward obtained another physician opinion that she suffered from depression as a result of the injury and was entitled to a higher permanent partial impairment.

The single hearing member, and later the full Board, adopted the findings of the IME report, which also made reference to the employee being Oriental. The Board found that Ward did not carry her burden of proving that her depression, anxiety, or cardiac issues were related to the work injury. On appeal, Ward argued that the full Board erred in considering the IME report because of the "Oriental" reference. The court of appeals rejected this argument, holding that the descriptive reference had no bearing on the evaluation of Ward's injury and condition. Further, the court held that any claim of bias would have been relevant to the evaluation of the IME doctor's credibility—a task for the single hearing member, and that argument was waived. Moreover, no new evidence had been introduced to dispute the single hearing member's finding based on credibility. Thus, the court of appeals affirmed the full Board's decisions that Ward was at MMI and that the university was responsible for no medical care after the date of MMI.

## IV. EXCLUSIVE REMEDY

WABASH COUNTY HOSPITAL FOUNDATION, INC. V. LEE<sup>15</sup>

Dr. Lee was an eighty-nine-year-old anesthesiologist. The hospital suspended her surgery privileges while it conducted an investigation into her fitness to practice medicine. Lee was at the hospital checking her own blood

<sup>14</sup> 25 N.E.3d 172 (Ind. Ct. App. 2015).

<sup>15</sup> 4 N.E.3d 1229, *unpub.* (Ind. Ct. App. 2014).

pressure when a nurse approached her and told her to leave. During the conversation the nurse grabbed Lee's arm, which required arthroscopic repair. Subsequently, the hospital ordered Lee to remain off the premises.

Lee filed a complaint alleging assault or battery. The hospital filed a motion to dismiss based on lack of subject matter jurisdiction. Lee filed an amended complaint alleging that the injuries were outside the scope of the Worker's Compensation Act. The trial court placed the burden on the hospital to prove the claim was within the scope of the Worker's Compensation Act and decided that it could not conclude that the injuries were within the exclusive jurisdiction of the Indiana Worker's Compensation Act. The court of appeals determined that the trial court did not err in shifting the burden of proof to the employer asserting lack of jurisdiction. It further found that Lee was fulfilling no employment duties and, therefore, the injuries did not arise out of her employment. The court determined the Act did not apply and allowed the common-law suit to proceed.

Judge May concurred with the Board's conclusion but wrote a separate opinion that the trial court erred to the extent it placed on the hospital the burden to prove Lee's injuries were within the exclusive jurisdiction of the Worker's Compensation Act. The judge thought the burden should remain on Lee; however, she also believed the lawsuit should go forward because Lee established her injuries did not arise out of or in the course of her employment. The judge also discussed the court's comment that being placed on leave of absence removed Lee from the employment relationship. The legal definition of *leave of absence* is "a worker's temporary absence from employment or duty with the intention to return." Therefore, the judge opined that the leave of absence status should confirm Lee's status as an employee of the hospital, rather than an invitee.

FRONTZ V. MIDDLETOWN ENTERPRISES, INC.<sup>16</sup>

Frontz worked for a professional employment agency that provided temporary (leased) workers to other businesses. The agency compensated its employees and maintained worker's compensation insurance. During her employment with the agency, Frontz was assigned to work at the Middletown Enterprises, Inc.'s glass factory. During this assignment, Frontz was subjected to extreme heat in a confined space. Frontz was diagnosed with severe heat stroke, resulting in multiple organ failures and permanent injuries.

Frontz filed a tort lawsuit against both the agency and the factory, and she filed a worker's compensation claim listing both companies as her employers. Both companies moved for summary judgment in the tort action, arguing that the Indiana Worker's Compensation Act was Frontz's exclusive remedy. The trial court granted the motions. The court of appeals up-

<sup>16</sup> 15 N.E.3d 666 (Ind. Ct. App. 2014).



2015]

*Worker's Compensation Year in Review*

125

held the trial court's grant of summary judgment. It reasoned that temporary employees are leased employees, and under Indiana Code § 22-3-6-1 (amended in 2001), both a lessor and a lessee of employees are joint employers for the purposes of the Act. Thus, both the agency and the factory were deemed to be Frontz's employers for purposes of injuries sustained arising out of and in the course of employment, and the Act's exclusive remedy provision precluded the tort action.

MELTON V. STEPHENS<sup>17</sup>

Two Indiana residents employed by Indiana companies were involved in a motor vehicle collision in Illinois. Both drivers were working in their respective employment capacities at the time of the collision, and both of their trips began in Indiana. One of the drivers sued the other driver and his employer (in an Indiana court) for negligence and loss of consortium. A dispute arose regarding whether Illinois or Indiana substantive law applied.

The trial court determined Illinois law should apply. The court of appeals affirmed after weighing multiple factors. In its choice-of-law analysis, the Indiana Court of Appeals held that that the filing for worker's compensation benefits in Illinois did not control the choice of law for a related negligence action because the worker's compensation action failed to relate to hiring, supervision, or training, which was the basis of the tort action.

CITY OF MITCHELL V. PHELIX<sup>18</sup>

Police officer Phelix dismantled methamphetamine labs as part of his duties. He alleged that injuries he suffered (diabetes, peripheral neuropathy, systolic hypertension, and renal disease) were the result of his exposure to chemicals during the dismantling and that he was unable to work as a result of these conditions. Phelix requested disability from the Public Employees' Retirement Fund (PERF) under Indiana Code § 36-8-4-5. In 2009, he asked the City to pay his medical expenses. The City directed Phelix to file a claim with its worker's compensation carrier. The carrier denied the claim based on the medical opinions related to the cause of Phelix's neuropathy. Phelix did not file an application with the Board, instead he elected to pursue his medical costs under Indiana Code § 36-8-4-5. The City filed for declaratory judgment, and the trial court ruled that the City must pay the medical expenses.

The court of appeals, in an issue of first impression, reversed the finding that the worker's compensation statute controlled. It held that when a city elects to purchase worker's compensation insurance, an injured employee must seek payment of his medical expenses under the Act's provisions. Phelix failed to pursue his benefits under the Act by filing an application

<sup>17</sup> 13 N.E.3d 533 (Ind. Ct. App. 2014).

<sup>18</sup> 17 N.E.3d 971 (Ind. Ct. App. 2014).

with the Board, so he failed to exhaust his administrative remedies and waived his right to dispute the denial of his benefits under the Act. The City was obligated to pay Phelix's medical expenses under Indiana Code § 36-8-4-5 only if his benefits under the Act were terminated, but because benefits cannot end if they never started, the exception to the Act's exclusive remedy provision contained in Indiana Code § 22-3-2-2(g) did not apply.

#### V. PALLIATIVE MEDICAL CARE

The obligation to pay medical expenses after a determination of permanent partial impairment exists where the need for palliative or other future medical care is proven to be necessary to limit or reduce the impairment. Disagreements can arise regarding the nature and extent of compensation and benefits required after the date the work injury has reached maximum medical improvement.

#### MOORE D/B/A CAT DOG TRUCKING V. JERRELL<sup>19</sup>

A trucking company employee's clothes caught fire while at work, causing severe burns that required the amputation of both legs. Cat Dog Trucking paid temporary total disability for six and one-half years. Although it agreed that the employee (Jerrell) was permanently and totally disabled, the parties disagreed about the nature and scope of the relief to which he was entitled. Thereafter, the employee filed an application with the Board.

Jerrell's condition subsequently became permanent and quiescent, and he moved first into a nursing home and then into a rented home with his mother. After Jerrell moved in with his mother, Cat Dog Trucking paid Jerrell an extra \$160 every two weeks to compensate his mother for home care. Cat Dog Trucking eventually stopped paying for the mother's home care and began to provide care directly through an outside agency.

The Board entered an order for a permanent partial impairment in the amount of \$250,000 over a period of 500 weeks (rather than using the temporary total disability (TTD) rate, which would result in payment over 28 years), plus additional home healthcare payments, offset by the payments Cat Dog Trucking made *after* the conditions became quiescent.

Cat Dog Trucking appealed, challenging the Board's decision to make PPI payments payable over 500 weeks. It argued that the Act expressly imposed the 500-week period on permanent total disability awards, not PPI awards. Thus, it argued the \$250,000 should be paid in increments at the TTD rate. Cat Dog Trucking also appealed the Board's failure to give it credit for temporary total disability benefits it had paid and the home healthcare services it provided Jerrell.

<sup>19</sup> 4 N.E.3d 1227, *unpub.* (Ind. Ct. App. 2014).

The court affirmed the Board's order. It deferred to the Board's interpretation of the Act and the Board's conclusion that it is not limited to awarding PPI compensation at statutory weekly rates. The court held the liberal construction of the Act supported the Board's award and concluded that the Board did not err in ordering Cat Dog Trucking to pay the impairment over 500 weeks.

The court also rejected Cat Dog Trucking's argument that it was entitled to a credit for all TTD payments, not just the payments made after the date of quiescence. It held that the Board's interpretation was reasonable because the Act does not require a credit for TTD payments that overlap with PPI payments. Finally, the court rejected Cat Dog Trucking's request to receive credit for the home healthcare expense it paid to Jerrell's mother. It also rejected Jerrell's invitation to change the dates for which he is entitled to receive home healthcare. The court interpreted both of these requests as invitations to reweigh the evidence, which it will not do. Under the deferential standard of review, the court affirmed the Board's award

BANKS V. EVANS LIMESTONE CO.<sup>20</sup>

Banks, a truck driver and laborer, suffered a compensable injury to his lower back and right leg. After undergoing a discectomy, two authorized physicians recommended implanting a spinal cord stimulator, but Banks could not pursue this pain management because of his personal health conditions. During that time, Banks used an external stimulator for pain management. Evans Limestone Company did not authorize the procedure based on subsequent utilization review.

Banks sought and obtained a Board-ordered independent medical examination because there was a disagreement among the physicians regarding his need for a spinal cord stimulator. The IME physician did not recommend the spinal cord stimulator, and the Board rejected Banks' request to order the employer to allow the procedure. The Board also rejected Banks' claim of permanent total disability but ordered ongoing medication.

On review, the court of appeals affirmed, holding that the Board was well within its discretion when it relied on the IME opinion against recommending the spinal cord stimulator. The court also found that there was no evidence to support the lack of diligence claim, but offered its opinion that using a utilization review to determine medical care needs was not advisable.

## VI. THIRD-PARTY CLAIMS, INSURANCE

Section 13 of the Indiana Worker's Compensation Act gives the employee the right to sue negligent third parties who cause the injury, and it gives the employer the right to recover the worker's compensation payments

<sup>20</sup> 13 N.E.3d 555, *unpub.* (Ind. Ct. App. 2014),

made for that injury. The obligation to pay worker's compensation benefits ends when there has been a settlement or a judgment.

YOUNG V. HOODS GARDENS, INC.<sup>21</sup>

This case involved determination of secondary liability under the Act when a general contractor fails to carry worker's compensation insurance. Hood, a greenhouse owner, hired a contractor to remove a tree (tree extractor) setting an oral contract price of \$600, plus allowing the contractor to keep the removed wood. The contractor neither carried worker's compensation insurance nor provided a certificate to the owner showing that it did carry such insurance. The tree extractor hired a subcontractor (Young) to remove a tree stump for \$200. Young suffered severe injuries removing the stump that left him a paraplegic. Young sought payment of benefits under the Act from Hood Gardens, since the tree extractor carried no worker's compensation insurance.

Hood Gardens filed a declaratory judgment action, contending it was not secondarily liable under the Act because the value of the work performed was less than \$1000, in accordance with Indiana Code § 22-3-2-14(b). The trial court granted summary judgment in favor of the business. The court of appeals agreed and granted summary judgment, rejecting the subcontractor's argument that the "value" must exceed \$1000 to trigger secondary liability and should include extra items such as scrap wood that the tree extractor could keep. The court of appeals held that only the value specified by the tree extractor (in this case, the contract price of \$600) could trigger secondary liability.

On petition to transfer, the Indiana Supreme Court reversed the court of appeals and held that "value" under the Act included both direct monetary payment as well as any ancillary consideration in goods or services received for the work. Thus, the court held that an issue of fact remained regarding the value of the wood received by the tree extractor. It reversed the summary judgment granted to Hood Gardens and remanded the case for a determination of whether the value of that wood would bring the total value of the project to more than \$1000 and, therefore, trigger secondary liability under Indiana Code § 22-3-2-14(b).

---

<sup>21</sup> 24 N.E.3d 421 (Ind. 2015).