

8-31-2017

Twin City Fire Insurance Company V. Graciela Leija, CA-CV 16-0174 (2017)

In Arizona, an injured employee accepts workers' compensation benefits and later settles claims against a third party for less than the limits of the third party's insurance, the employee may obtain a judicial determination of whether the worker's compensation carrier's lien should be reduced to account for the employer's comparative fault.

Victor Leija was a window washer who fell three stories to his death after a scaffold collapsed. Twin City Fire Insurance Company ("Twin City"), the workers' compensation carrier, settled with Leija's widow and children for \$575,000. Leija's family then sued several third parties, including the building's owner, the property manager, the company that furnished the scaffold, and the company that fabricated it. The Leijas eventually settled for \$1,600,000—the combined total of all of the defendants' insurance policy limits, except for the City of Glendale ("the City"). The City, which was an additional insured on two of the other defendants' policies, settled without having to draw on its own insurance coverage.

Following settlement, Twin City sought enforcement of its lien against the settlement proceeds. When the Leijas rejected Twin City's demand, it filed suit to enforce the lien. The Leijas counterclaimed, alleging Twin City breached its duty of good faith and fair dealing, and breached a promise to reevaluate the lien amount after all the settlements were finalized.

Both sides eventually moved for summary judgment. The trial court rejected the Leijas' claims and held Twin City was not obligated to compromise its lien, but found a fact issue regarding whether Twin City promised to consider compromising the lien. The court held an action the third-party settlement was not the place to allocate fault to the employer. Finally, the court denied the Leijas' motion for leave to add claims against Twin City's parent company, citing undue delay and futility. After further discovery, the court granted Twin City's second motion for summary judgment, finding no evidence Twin City promised to compromise its lien. The Leijas timely appealed.

The Court of Appeals reversed denial of the Leijas' request for a trial on the damages and employer's comparative fault. Although an employee who receives worker's compensation benefits generally cannot sue the employer, literal application of the statute unfairly penalizes the employee here. Without an "equitable adjustment or apportionment, employers and their carriers would continue to obtain full liens against third party recoveries even where those awards have been effectively reduced by virtue of the employers' own fault."

The Court held that its decision to reverse and remand regarding equitable apportionment undercut the need to consider the Leijas' claims for breach of the covenant of good faith and fair dealing.

The Court also affirmed summary judgment finding no evidence to support Twin City's alleged promise to consider compromising the lien.

Finally, the Court found that the Leijas moved to amend three years into the litigation, nine months after their discovery of parent company's purported role in Twin City's consideration of their claim, and eight months after the close of discovery. Based on these facts, the lower court did not abuse its discretion in denying the motion to amend.