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Workers' Comp Law's Exclusivity Provision Protects Individual Directors of Nonprofit

By Anita Lichtblau, Esq.

For more than a hundred years, the workers' compensation law in Massachusetts has guaranteed workers payment for any workplace injuries they suffered, regardless of fault. In exchange, workers give up any right to sue their employers for those injuries under tort law. Last week the Massachusetts Supreme Judicial Court, the Commonwealth's highest court, ruled in Estate of Stephanie Moulton v. Puopolo that the individual members of the board of directors of the corporation that employed the worker are, like the corporation itself, considered the employer under the workers' compensation law. Therefore, the Court held, the directors may not be sued for any injuries the employee sustained while acting within the course of her employment. The Court also held that the directors, as the employer, had no fiduciary duties to their employee and that only the Attorney General may seek corrective action for an alleged breach of the directors' duties to the corporation.

This important decision arose from the tragic death of an employee of North Suffolk Mental Health Association. While at work as a counselor at a North Suffolk residential treatment facility, the employee was fatally assaulted by a resident. The estate of the employee attempted to hold the individual directors liable in a wrongful death action. The estate alleged that the directors' adoption and enforcement of certain admissions and operations policies, and their failure to adopt or enforce other such policies, had resulted in the North Suffolk employees who evaluated clients for residential placement being unaware of the resident's violent history. It claimed that the disclosure of the individual's history would have prevented his admission to the North Suffolk facility or if admitted, employees at the facility would have received adequate workplace safety training and equipment and the decedent employee would not have been left alone with him.

The Court held that even though individual board members vote to adopt and enforce corporate policies, the vote is the action of the board of directors as a collective whole and does not, without more, cause the directors to be treated as third parties separate from the employer corporation. A corporation exercises its authority through and under its board of directors. In this case, there was no allegation that the individual directors acted outside of their roles as members of the board or that the board took any action without a formal board meeting or vote. The estate attempted to distinguish the directors from North Suffolk itself by claiming that the directors' conflicts of interest caused them to manipulate North Suffolk's corporate policies to further their personal interests, but the Court rejected that attempt both because the estate did not

back up those claims with any specific facts and because the workers' compensation exclusivity provision does not exempt self-dealing. The Court also held that its determination that the individual defendants should be treated as the employer was supported by allegations of the estate establishing that the directors acted, or had the ability to act, in the capacity of employer.

What does this decision mean for nonprofit providers and their boards? It certainly provides protection to individual directors who could face claims for workplace injuries. As the Court said, "[e]xposing corporate directors to personal liability for claimed injuries to employees, where the corporation is not itself liable under the exclusivity provision of the act, might well discourage well-qualified individuals from serving as directors of charitable organizations attempting to further the public interest." The decision could go beyond that, however, to impact other types of claims against directors by its emphasis on treating directors as part of the corporation itself, rather than independent actors, so long as they are acting in good faith and with due care within the scope of the performance of their duties as board members. The decision therefore indicates the importance of the nonprofit board acting consistently with its bylaws, in taking votes on policies, for example, and in ensuring that individual directors members do not undertake individual actions on behalf of the nonprofit unless such actions have been delegated by the board as a whole through bylaws or resolutions. Finally, it is worth noting that although the defendants were successful in this case, undoubtedly significant legal expenses were incurred. It is therefore essential that adequate insurance and/or indemnification provisions cover director's legal expenses in these situations.

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