Thanks to a recent ruling of the SC Supreme Court, the burden on general contractors to ensure that they qualify for reimbursement from the Uninsured Employers' Fund just got more rigorous. The Uninsured Employers' Fund, section 42-1-415 of the SC Code, allows a qualified general to shift the burden of workers' compensation coverage for an employee of a subcontractor who suffers a work-related injury to the Fund. This protects the general, who will be legally determined to be the statutory employer of the injured subcontractor's employee, from exposure if the subcontractor's own insurance is cancelled after the commencement of the project. The shift in exposure from the general to the Fund is statutorily allowed when the subcontractor represents that it maintains workers' compensation insurance, *and* general contractor obtains documentation of such insurance at the time the subcontractor is "engaged to perform work".

The phrase "engaged to perform work" had not been specifically interpreted by the Court until the recent decision of *Hardee v. McDowell*, et al. At issue was exactly when does a general need to verify the presence of its subcontractor's valid insurance in order to avail itself to the benefits of the Fund. The Court found that "engaged to perform work" requires that *every time* a general enters into a subcontract it must verify that the subcontractor has insurance if it is to escape potential exposure under workers' compensation laws for subcontractor injuries. This rule applies regardless of whether the general verified insurance on a previous project.

The *Hardee* case involved an employee of a subcontractor who was severally and permanently injured after falling from scaffolding. The subcontractor's workers' compensation insurance had been cancelled the day before the accident. The general was a statutory employer of the injured worker under SC law and could be held liable for work-related injury to its subcontractor's employee. Because the general had verified the presence of valid insurance on that same subcontractor with a policy period covering the date of the accident on an unrelated project just a few months prior, the general sought to transfer liability to the Fund. The attempt to relieve itself of this exposure was denied.

The general argued that because it verified insurance at the beginning of the year on another project, it could shift its exposure under the statute. In opposition, the injured worker and the Fund argued that because the general did not check for insurance prior to the commencement of the specific job on which the worker was injured, the shifting of exposure was unavailable. In resolving the dispute, the Court held that "'engaged to perform work' means each time a subcontractor is actually hired to perform work. Thus, if a contractor enters into a contract to hire a subcontractor for one job in January and then enters into another contract to hire the subcontractor for a second job in February, the contractor must verify that the subcontractor still has insurance coverage at the time of the February hiring." The general's arguments that the statute requires the general to verify insurance only at the first engagement of a particular subcontractor or, at most, on a yearly basis were specifically rejected by the Court.

This opinion teaches general contractors that each time they enter into a new contract for a new project with a subcontractor, they must verify that the subcontractor has valid insurance. The fact that the general has previously verified insurance prior to entering into the first of a series of contracts with a particular subcontractor or has done so on another unrelated project will no longer qualify that general to shift exposure to the Fund when an employee of that subcontractor

is injured on a subsequent project. Diligence by general contractors on this issue can no longer be the goal, it must be standard practice.

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