

# WASHINGTON CASE UPDATE

## Bad A Subcontractor's Mere Knowledge of a Safety Violation and Failure to Remedy It Does Not Establish Control to Impose a Duty under WISHA

Claims Pointer: Under WISHA, a subcontractor may be held liable for injuries to employees of the general contractor for safety violations if a dangerous condition that caused the injury was under the control of the subcontractor. However, a subcontractor's knowledge of a defect and failure to act are not enough by themselves to show that the subcontractor exercised sufficient control over the dangerous condition so as to establish subcontractor liability.

*Siebert v. Bogart Siding, Inc. and Milgard Manufacturing and Owens NW Painting Contractors*, Case No. 61769-9-I, in Division I Court of Appeals for the State of Washington (May 18, 2009).

Homestead NW Development Company (Homestead), a general contractor of a townhome construction project, employed Dale Siebert (Siebert) to do carpentry work. While wrapping a beam, Siebert inadvertently stepped off of a second story deck, through an area that was missing a safety railing, and fell to the ground. As a result of his injuries, Siebert is now a paraplegic.

Siebert filed a personal injury action alleging that several of the subcontractors, including Owens NW Painting Contractors (Owens), were negligent in removing and failing to replace safety rails on the second floor deck. It was undisputed that Owens did not remove the safety railings. Owens moved for summary judgment, arguing that as a subcontractor, it did not have a duty to Siebert, who was an employee of the general contractor, and that there was no evidence that Owens had been negligent. The trial court granted Owens motion. Siebert appealed.

On appeal, Siebert argued, among other things, that Owens owed him a statutory duty under the Washington Industrial Safety and Health Act (WISHA). He argued that under WISHA, a subcontractor may be held liable to employees of general contractors for safety violations when the dangerous condition was under the control of the subcontractor. Siebert argued that Owens owed him a duty to replace or seek replacement of the missing guardrails because the area through which Siebert fell was under the control of Owens. The court disagreed.

The court found that even though Owens worked on this area of the building in the days preceding the accident, had knowledge that the safety railings were missing and chose not to repair the railings, Owens' mere knowledge and failure to act were insufficient to establish that Owens controlled the area. The court also noted that Homestead retained supervisory authority over the entire site and was tasked with ensuring that safety railings were in place throughout. As such, the court held that Owens did not owe Siebert a duty based on a WISHA violation.

*NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.*

*This article is intended to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this email without seeking professional counsel.*

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