

Connecticut Supreme Court Rejects Workers' Claim for Lost Wages due to Power Plant Explosion

In a decision to be released on November 24, 2015 in the consolidated appeals of *Lawrence v. O and G Industries, et al* and *Beamer v. O and G Industries, et al*, the Connecticut Supreme Court re-affirmed the long settled rule that a plaintiff cannot recover purely economic damages in a tort action absent physical harm to person or property or privity of contract with the tortfeasor.

The plaintiffs were employed at the Kleen Energy power plant, which was significantly damaged in an explosion during the course of a large construction project. The employees sued the general contractor and numerous subcontractors on the project, claiming that their negligence caused the explosion and, as a result, caused them to lose wages when the power plant was closed. The trial court agreed that the plaintiffs' losses were a foreseeable result of the explosion; however, it granted the defendants' motion to strike on the basis that the defendants did not owe the plant employees any legal duty. The court based its determination on public policy reasons, relying on the four factor test articulated in *Jaworski v. Kiernan*, 241 Conn. 399, 404 (1997). The four factors include: (1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) decisions of other jurisdictions in similar circumstances.

Based on this test, the trial court concluded that "for more than 150 years the law in Connecticut has limited tort liability to cases involving physical harm to person or property. Departing from this requirement would undermine reasonable expectations built on this long held understanding of the law, and would create an endless ripple of liabilities arising from the defendants' conduct. Public policy is not served by so expanding the defendants' liability to purely economic claims such as those asserted by the plaintiffs."

The Supreme Court agreed. It held that given existing Connecticut case law, the parties to the construction contracts did not have any expectation that the defendants could be held liable to any and all workers at the power plant who might lose wages as a result of the temporary closing of the plant; (2) permitting the plaintiffs to pursue their claims would not increase safety because the activity that triggered the explosion was a necessary function to properly operate the power plant rather than an optional activity that should be discouraged by the imposition of tort liability to parties outside of the contract; (3) recognizing this type of claim could lead to potentially limitless liability and require the trial court to draw arbitrary limitations between individuals or businesses who suffered economically when construction was halted due to the explosion; and (4) the majority of state and federal courts have held that a plaintiff may not recover in tort for purely economic loss absent physical injury to person or property. In reaching

its holding, the Supreme Court emphasized that expanding the defendants' potential tort liability to include those who suffered purely economic harm, as opposed to personal injury or property damage, "appears likely to result in a significant increase in litigation, without a corresponding increase in the safe operation of industrial sites such as the power plant." The Supreme Court's decision serves as a clear reminder that a defendant's potential liability for damages is not limitless. As a matter of public policy, defendants can only be held liable to those with whom they contract or who suffer personal injuries or property damage as a result of the negligence.

For more information concerning this decision, please feel free to contact James A. Mahar, Esq. (jamahar@ryandelucalaw.com) or Janice D. Lai, Esq. (jdlai@ryandelucalaw.com) at Ryan Ryan Deluca LLP.