Work Place Injury Claims: Beyond Workers' Comp

by Katherine White

This regular Insight *feature examines policymaking by the judicial branch of North Carolina state government. This column focuses on the recent case of* Woodson v. Rowland, *which expanded injured workers' ability to win claims against employers for work place injuries.*

Until the late summer of 1991, families of workers killed or injured on the job because of the reckless acts of their employers knew about what they were worth, dead or alive: $123,000.[1]

But on Aug. 14, 1991, just 22 days before the Sept. 3. 1991 fire at a Hamlet chicken processing plant that killed 25 workers and injured another 78 workers, the law suddenly changed.

On that day the N.C. Supreme Court, in a landmark decision with broad implications for workers and for businesses, greatly expanded workers' power to file claims beyond the strictures of the state's Workers' Compensation Act.[2] This will affect the surviving workers and families of the deceased, among others, who will be able to file for greater compensation. Some applaud the decision, while others say the decision went too far and that the legislature should consider rescinding it since it is based on an interpretation of a statute, not on the state constitution.

Following the lead of a few other state courts, the N.C. Supreme Court not only expanded the rights of some workers who are injured or killed on the job, but also opened the door for multimillion dollar court awards for the injuries.[3] The decision also signals a major policy shift for state standards regarding the way employers should operate. No longer will companies ignore serious OSHA violations and merely pay the fines, because to do so may expose them to massive civil judgments.

Until *Woodson v. Rowland*[4] no one in North Carolina could recover for claims in civil court for injuries caused by the reckless and wanton acts of their employers. They could sue their employer if the employer or a co-worker intentionally did something to harm the employee, such as hit him in the face or shoot him with a gun.[5] For all other injuries, including those based on intentional, unsafe conditions in the work place, workers could recover only by filing a workers' compensation claim where damages are limited to medical expenses and wage replacement benefits tied to salary levels.

A trial court has yet to decide what damages should be awarded for the employee's death in *Woodson,* but had the administrator of his estate simply filed a claim for workers' compensation benefits, the estate would have recovered $60,000. Before Woodson, the exclusiveness of the workers' compensation provisions and the statutorily mandated compensation had been the law in North Carolina since 1929, when the General Assembly adopted the Workers' Compensation Act.

The workers' compensation law traditionally has required a worker to pursue a claim for injuries under the Workers' Compensation Act, and no-

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where else. The law attempts to balance competing interests between employers and employees. Injured workers are certain to recover for on-the-job accidents without having their employers raise the defense of contributory negligence where the worker is alleged to contribute through his or her own negligence, or that the employee assumed the risk by knowing of possible harm and doing nothing to notify the employer or mitigate the danger. Employers, on the other hand, gain limits on the amount of money employees can recover and do not have to defend civil actions that could result in larger damage awards.

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The exclusivity of the remedy "is part of the *quid pro quo* in which the sacrifices and gains of employees and employers are to some extent put in balance."[6]

The case involves the death of an employee in a trench cave-in at a Research Triangle construction site. Thomas Sprouse was instructed to work in a 14-foot-deep, four-foot-wide trench which was not sloped, shored, or braced, as required by the Occupational Safety and Health Act (OSHA) of North Carolina.[7] His employer, Morris Rowland Utility Inc., had been cited four times by OSHA in the previous six-and-a-half years for violating regulations governing trenching safety procedures. The administrator of Sprouse's estate sued the employer civilly, electing not to pursue a workers' compensation claim.

The Supreme Court, in a 5–2 decision, concluded that the evidence was sufficient to maintain the action in a trial court because a preliminary showing was made that the employer "intentionally engage[d] in misconduct knowing it [was] substantially certain to cause serious injury or death to employees.[8] The misconduct, wrote Chief Justice James G. Exum for the majority, "is tantamount to an intentional tort, and civil actions based thereon are not barred by the exclusivity provisions of the Act." In other words, the company's disregard for safety made the resulting death not an accident but an intentional act on the employer's part.[9]

Associate Justice Burley Q. Mitchell Jr., in a dissenting opinion with Justice Louis B. Meyer, noted that "the majority's holding represents reasonable and perhaps desirable social policy. . . ."[10] But, citing the Court of Appeals' decision in the same case, he concluded that "a right to bring a civil action 'against his employer, even for gross, willful, and wanton negligence would skew the balance of interests inherent in [the] Act. Changes in the Act's delicate balance of interests is more properly a legislative prerogative than a judicial function.'"[11]

A leading commentator on the subject sides with the minority. Arthur Larson, a Duke University law professor and author of a leading text on workers' compensation law, believes that with the *Woodson* decision, the Supreme Court dove head first into "treacherous waters" and, in so doing, undermined the state's Workers' Compensation Act. In equating willful and wanton negligence with intent to injure, Larson says the courts "still cannot quite accept the non-fault nature of workers' compensation, and have taken it on themselves to change the statutory scheme to conform more closely to their values."[12]

"If every case of gross negligence on the part of the employer is taken out (from the workers' compensation system), it's only a matter of time before the exclusiveness provision is a joke," he said in an interview.

Supporters of the decision say the court properly and narrowly—interpreted the statutory language and improved the workers' lot by providing

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Duke Law School

the chance for additional compensation when an employer acts in such a way as to unreasonably place his employees at substantial risk for injury or death.

The Supreme Court used language that has been approved by other state legislatures in an effort to narrow the scope of the decision, said Norman B. Smith, a Greensboro lawyer who represented the administrator of Sprouse's estate. "It's reserved for extremely egregious circumstances," says Smith. "I don't think it will open the floodgates. I don't think it will be the beginning of the end of workers' comp." Commenting on a lawyer who, immediately after the *Woodson* decision, filed 58 civil actions for workers who had injuries from asbestos, chemical burns, and unsafe equipment, Smith said, "That's nuts."[13]

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More important than the allowance of civil claims, Smith said, "The most significant aspect of the case is that it will have the effect of protecting workers in dangerous situations. The employer will take more precautions. That's never been true in the past." Mr. Smith explained that the state's OSHA program has inadequate resources to inspect all work places for safety violations. Further, the penalties are relatively small and encourage violations. It's "more inexpensive to pay the fine and risk an unexpected death or maiming" than to expend funds for safety equipment, he says.

Not only that, but a typical employer's liability insurance policy will not cover intentional wrongs of the employer so companies will have to pay any claims out of their own coffers, an additional incentive for providing a safe work environment.

J. Bruce Hoof, a lawyer for Morris Rowland Utility, disagrees with Smith. He contends that lawyers for workers will have to file civil actions to protect themselves from malpractice claims. "This is the classic case of 'bad facts make bad law,'" he says. "My client made some mistakes, but he didn't mean to kill anyone."

Rowland and Morris Rowland Utility, Inc. relied on earlier Supreme Court decisions in their effort to avoid civil liability. The company and its sole shareholder argued that "The intentional failure to provide a safe place or the knowing violation of OSHA regulations does not constitute an intent to injure. . . .[14] At most, there was an intentional 'toleration of a dangerous condition;' that is, the OSHA violations, particularly the absence of shoring."[15] Citing an earlier Supreme Court case, the employer noted "in any normal use of the words, it cannot be said that this constituted a 'deliberate infliction of harm.'"[16]

The earlier decision, *Barrino v. Radiator Specialty Co.*,[17] involved the death of an employee as the result of an explosion and fire at the factory where she worked. The conditions at the plant included: several violations of OSHA and National Electric Code regulations; meters designed to warn of danger and explosive gas and vapor levels disabled with plastic bags so they would not register; and alarms warning of dangerous and explosive levels turned off.

Rejecting an attempt to seek civil damages as opposed to workers' compensation recovery, the Supreme Court stated: "It is . . . clear from the act itself that such allegations of safety code violations do not remove the claim from the exclusivity of the act. N.C.G.S. 97-12 provides *inter alia* a penalty to the employer of a 10 percent increase in benefits 'when the injury or death is caused by the willful failure of the employer to comply with any statutory requirement or any lawful order of the [Industrial] Commission."[18]

Justice Exum noted in *Woodson* that only two of the four majority justices in *Barrino* agreed with the above language.[19] He and the other justices joining him in the majority decision expressly adopted the views of the *Barrino* dissent.

The court's shift means the issue is alive for General Assembly action. Representatives of N.C. Citizens for Business and Industry (NCCBI) and the North Carolina chapter of the National Federation of Independent Businesses express concern about the case. Anne Griffith, a lobbyist with NCCBI, said some members of her organization were concerned "about how broadly or narrowly the decision will be construed." Griffith explained that often employers simply pay OSHA penalties, whether they agree with them or not, because the

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cost of defending the fines often exceeds the fine itself.

Because OSHA violations now could be determinative of where an employee can sue the employer, she said the companies would begin defending them, which could further stress the N.C. Department of Labor's limited resources. But she also said NCCBI members wanted to make clear that their concerns about the *Woodson* decision did not mean that members were unfeeling toward victims of industrial accidents.

Similarly, House Speaker Daniel T. Blue Jr. wants to address the issue before the Occupational Fire and Safety Study Commission, which began meeting in December 1991 and reports to the 1992 and 1993 sessions. Both sides of the *Woodson* decision are represented on the study commission, which plans "to review the existing regulatory schemes and determine whether there are ways to improve what we're doing," says Alan Briggs, legal counsel to Blue. Beyond considering additional funds for the Labor Department, Briggs said that Speaker Blue wants to use the commission "as a vehicle in a political sense to change attitudes. . . . He feels like all the money in the world and inspectors are not enough if employers are more concerned about theft than fire."

FOOTNOTES

[1] This figure is an estimate. Actual figures vary based on the individual's salary, extent of injury, and number of dependents. The award may go as high as $160,000.

[2] G.S. Chap. 97.

[3] That is, according to an employer's ability to pay. Employees can probably recover only from the employer, because most liability insurance policies exempt from coverage any payment for injuries and death cause by the intentional acts of the employers. The owner of Imperial Food Products, where the Sept. 1991 fire in Hamlet killed 25 and injured 78, apparently has no assets from which victims can recover.

[4] 329 N.C. 330. 407 SE2d 222 (1991).

[5] An employee also could sue a co-worker for reckless negligence. See *Pleasant v. Johnson,* 312 N.C. 710, 325 SE2d 244 (1985).

[6] Arthur Larson, *The Law of Workmen's Compensation,* Section 65.11 (1987).

[7] G.S. 95-126.

[8] *Woodson,* supra, at 340, 407 SE2d at 228.

[9] *Id.* at 341, 407 SE2d at 228.

[10] *Id.* at 362, 407 SE2d at 241.

[11] *Id.*

[12] Larson, *supra* at Section 68.15.

[13] Duke Power Co. settled most of those claims as part of a settlement approaching $10 million in late April, 1992. The settlement covered 108 claims against the utility involving deaths and illnesses from exposure to asbestos. See Joseph Menn, "Duke OKs Asbestos Settlements," *The Charlotte Observer,* April 24, 1992, p. 1D.

[14] Neal Morris Rowland and Morris Rowland Utility, Inc. Defendant Appellees' New Brief at p. 6.

[15] *Id.* at p. 19.

[16] *Id.*

[17] 315 N.C. 500, 340 SE2d 295 (1986).

[18] *Id.* at 515, 340 SE2d at 304.

[19] Justice Meyer, who joined Justice Mitchell in the concurring and dissenting decision of *Woodson,* wrote the *Barrino* decision and is the only justice of the two Justices Exum referred to on the present court. Justice Mitchell concurred in the *Barrino* result but did so on the basis that the plaintiff already had received workers' compensation payments and had, therefore, elected to file under the Workers' Compensation Act, prohibiting any alternative recovery. From his dissent in *Woodson,* however, it would appear that he could have agreed with Justice Meyer at that time but took a narrower approach that for that case, at least, had the same practical result. Justice Harry C. Martin wrote the dissenting opinion and was joined by Justice Exum and Justice Henry E. Frye. The other justices in the *Woodson* majority—Justices John Webb and Willis P. Whichard—were not on the court when *Barrino* was decided.