

RISK INSIGHT:

Another Reason to Check Your Indemnification Provisions



07.08.2014

On March 13, 2014, the 7th Circuit Court of Appeals (the federal appeals court covering Wisconsin, Illinois, and Indiana) ruled in the case [Krien v. Harsco](#), finding that a general contractor waived its worker's compensation exemption via an indemnification provision located in a contract between the general contractor and its subcontractor. This ruling provides yet another reason to reread existing contracts as well as amend the language utilized in future contracts to prevent a similar result.

FACTS OF THE CASE

An employee of Riley Construction Co. (Riley), a general contractor, was injured when he fell through a scaffold he was standing on. The injured worker alleged that the scaffolding was provided by Harsco Corp. (Harsco), a subcontractor supplier. The injured employee sued Harsco for his injuries and eventually settled the claim for \$900,000. Even before Harsco paid out this settlement, Harsco brought a claim against Riley seeking indemnification for damages that Harsco would have to pay to Riley's employee. This was based on an indemnification provision in the contract between Riley and Harsco that required Riley to indemnify Harsco for any loss or damage arising from the use of Harsco's equipment (in this case, the scaffolding).

In response to the suit by Harsco, Riley argued that immunity under the Wisconsin worker's compensation statute prevents an employee from bringing a suit against his or her employer, and that if Riley had to indemnify Harsco for damages paid to its own employee; it would be the same as if the employee had sued Riley itself. The Court of Appeals found that the indemnity provision would be "seriously incomplete" if they interpreted the provision as if Riley had not waived its worker's compensation exemption. Finding that Riley is not prevented by Wisconsin law from waiving its exemption, the court stated that Riley effectuated a waiver through the indemnity provision.

KEY TAKEAWAYS

A court may interpret an indemnity provision to waive an employer's worker's compensation exemption if an employee brings suit against another party to the contract. It may be prudent to add language to such contracts explicitly stating that the employer does not waive its worker's compensation exemption.

This article is for informational purposes only. It should not be construed or interpreted as legal advice. In all cases, employers should consult with their legal counsel for assistance in these matters.

About M3

Founded in 1968, M3 Insurance is Wisconsin's largest privately held insurance agency, providing employee benefits, property & casualty, executive benefits, employer-sponsored retirement plans and personal lines. The professionals at M3 are aligned to specialized industry groups, serving clients across the country from five Wisconsin offices.

M3 is consistently ranked in the top 1% of insurance brokers nationwide and has been named to the list of Best Places to Work in Insurance by *Business Insurance* magazine.

www.m3ins.com | 800.272.2443

