



# The GSH 60-Second Memo

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## **An Exclusive Remedy for One Employer Can Also be a Personal Injury Claim to Another**

**By: Felicia Miller-Watson, Esq.**

Suppose your company has a contract with ABC Security for a security guard at the main entrances/exits of your property. The security guard's job description includes surveying the parking lot area. The security guard is not your employee, but an employee of ABC Security Company. While the security guard was surveying your company parking lot, he was struck by a semi-truck owned by a large third-party transportation company. The injured security guard is rushed to the hospital, where he is diagnosed with a fractured rib and pelvic bone and his spleen and two discs in his back were ruptured. His injuries required multiple surgeries, and he has been diagnosed with some permanent partial disability.

Is this a workers' compensation claim or is it a personal injury claim? The answer could be both, in most states. Generally, workers' compensation benefits are the "exclusive remedy" for work-related claims. However, this only means that workers' compensation benefits are the only recourse he has against his employer. Typically, workers' compensation law also bars action against co-employees who cause the worker's injury.

Nevertheless, there are circumstances where a personal injury

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action remains possible. The construction industry is a common breeding ground for third-party claims, because it is common for workers from different contractors and sub-contractors to be working at the same construction site. As a result, construction injuries are often caused by the negligence of a third party, and the workers' compensation limits do not apply.

Another circumstance when an injured worker may bring a personal injury lawsuit, in addition to a workers' compensation claim, is product liability. If a worker is injured using defective or unreasonably dangerous equipment, or because of inadequate warning labels, the manufacturer, distributor or installer of that equipment may be liable.

Yet another example of an exception to the exclusive remedy provision is an intentional tort. If a co-employee acts with intent to harm the worker, typically the exclusive remedy provision of workers' compensation law will not apply, and that injured worker may bring a lawsuit against his employer. Other actions not barred by workers' compensation laws include trespass, invasion of privacy, sexual harassment and defamation.

Finally, there are injuries occurring on premises owned by a party other than the employer, as in our earlier hypothetical. You, as owner of the property, as well as the truck driver and transportation company, would all be potentially liable for the security guard's injuries.

Keep in mind, if there is a lawsuit resulting in recovery of damages, the actual employer (or more accurately, its workers' comp insurer) will be entitled to recover all or a portion of the benefits it paid out. So, the injured employee and his employer alike have a significant interest in finding some third party negligence in some way.

Remember, it is sometimes very tricky to determine if an injury was caused by a third party, because each state creates their own complicated rules regarding what constitutes an "employer" and which workers are deemed to be "co-employees." Therefore, it is beneficial to work with legal counsel to determine whether or not workers' compensation would be the exclusive remedy for those such injuries and whether those same injuries may have been fully or partially caused by a third party.

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