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Idaho Supreme Court Refuses to Modify the Workers Compensation Exclusive Remedy Doctrine



By [James Dale](#) and [Anna Courtney](#) on November 29, 2016

Posted in [Cases, Idaho](#)

In order to provide near certain relief for employees injured in the course of employment, the Idaho Worker's Compensation Act withdrew the common law remedies workers traditionally held against their employers. This compromise limits employers' liability in exchange for providing sure and speedy relief for injured workers and is encapsulated in Idaho Code § 72-209, or the exclusive remedy provision. Recently, in two closely watched cases, [Marek v. Hecla, Limited](#), 2016 Opinion 132 (November 18, 2016) and [Barrett v. Hecla Mining Co.](#), 2016 Opinion 133 (November 18, 2016), the Idaho Supreme Court provided guidance on a narrow exception to this provision under Idaho Code § 72-209(3). Section 72-209(3) allows an employee to pursue common law claims against an employer in a narrow circumstance: "where the injury or death is proximately caused by the willful or unprovoked physical aggression of the employer, its officers, agents, servants or employees."

These cases involved common law negligence lawsuits brought by miners and the estate of a deceased miner against Hecla Mining Company (Hecla) following separate accidents at its Lucky Friday Silver Mine in northern Idaho. The trial court granted summary judgment in Hecla's favor after concluding that Hecla's conduct did not amount to "willful or unprovoked physical aggression" under Section 72-209(3) and, as a result, that the plaintiffs' common law claims were barred by the exclusive remedy provision. The plaintiffs appealed arguing that "willful or unprovoked physical aggression" includes situations where the employer engages in conduct that the employer is


substantially certain will result in injury to an employee. The Plaintiffs alleged that assigning workers to an area that was extremely dangerous, without informing the workers of the dangerous conditions, amounted to an offensive act willfully exposing them to circumstances that created a substantial likelihood of injury, which satisfied the exemption. With this interpretation, the plaintiffs sought to redefine the scope of the exclusive remedy exemption with the practical result of increasing employers' exposure to common law tort liability.

The Idaho Supreme Court rejected this interpretation concluding that “willful or unprovoked physical aggression” occurs when the employer (1) committed an offensive action or hostile attack (2) aimed at the bodily integrity of the employee with (3) either the specific intent (willful) or general intent (unprovoked) to injure an employee. *Marek*, slip op. at 7, 8. To support a finding that the employer acted with specific intent to harm, there must be evidence that the employer intended a specific harm to the employee and then undertook some means appropriate to that end. To support a finding that the employer acted with general intent, the employee does not have to show the employer specifically wished the employee harm, but rather there must be evidence the employer actually knew or consciously disregarded knowledge that employee injury would result from the employer's action. As such, a showing of an employer's gross negligence is not sufficient to trigger an exception to the exclusive remedy provision. Rather, the employee must show that the employer “engaged in conduct *knowing* employee injury would result.” *Id.* at 10 (emphasis added). Because there was no evidence Hecla specifically intended to harm the workers, or had actual knowledge that the events triggering the workplace accidents would occur, the exemption did not apply and the Idaho Workers Compensation Act provided the exclusive remedy.

With these rulings, the Idaho Supreme Court reinforced the strength of the exclusive remedy provision, which in turn protects employers from increased common law litigation in the event of employee injuries. These cases should help end any lingering debate about the required elements of proof necessary to fit within the scope of the exemption to the exclusive remedy doctrine. In the absence of such evidence, employers remain protected from the slippery slope of litigation outside the workers compensation forum.

Marek v. Hecla, Limited, 2016 Opinion 132 (November 18, 2016)

Barrett v. Hecla Mining Co., 2016 Opinion 133 (November 18, 2016)



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