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BLOGS

Vicarious Liability

Franchisor Not Liable for Workers' Compensation Claim Brought by Franchisee's Employee

Meanwhile, the Kentucky Supreme Court recently held that the franchisor of the Quizno's system, QFA Royalties, LLC ("QFA"), did not have up-the-ladder liability for a workers' compensation claim brought by an employee of one of its franchisees. *Uninsured Employers' Fund v. Crowder*, 2016 WL 2605624 (Ky. May 5, 2016). The injured worker was employed by a Quizno's franchisee whose workers' compensation insurance had lapsed. The state's Uninsured Employers' Fund paid the employee's benefits and sought reimbursement from QFA under a Kentucky statute that imposes workers' compensation liability on entities deemed to be contractors.

The court affirmed an earlier ruling that QFA did not meet the statutory definition of "contractor" and therefore was not responsible for paying the employee's benefits. Under the statute at issue, a contractor is one who subcontracts "No have work performed of a kind which is a regular or recurrent part" of its business. QFA argued — and the court agreed — that "making and selling sandwiches" was not a regular and recurrent part of QFA's business. Noting that up-the-ladder liability decisions must be made on a case-by-case basis, the court found that QFA's work was limited to "granting and overseeing franchisee agreements," not operating individual restaurants. The court noted that while QFA's franchise agreement and operating manual provided detailed instructions on how to manage Quizno's restaurants on a day-to-day basis, those guidelines were only intended to protect the brand that QFA sold.

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