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CALIFORNIA COURT OF APPEAL EXPANDS CONTRACTOR LIABILITY FOR ACCIDENTS OCCURRING IN CONGESTED TRAFFIC CONTROL ZONES

Recently, the California Court of Appeal for the Third Circuit (Sacramento) ruled that a highway contractor may be liable for accidents occurring in traffic control zones regardless of the negligence of the driver causing the accident and the proximity of the work.

In *Shipp v. Western Engineering, Inc.*, a highway contractor, Western Engineering, was sued for negligence in a case involving a rear-end accident that occurred in a congested, one-way, traffic control zone. Citing the offending driver's admission that the accident was caused by his inattentiveness to the car stopped in front of him and the distance of the accident from construction work, Western Engineering moved for summary judgment arguing that it did not owe the plaintiff a duty of care.

The Court of Appeal reversed the trial court's grant of summary judgment, holding that the contractor owed the plaintiff a duty of care regardless of the negligence of the driver causing the accident or the proximity of the accident to the location of the construction site. In so ruling, the court concluded that the congestion created by the contractor's traffic control operations was a "dangerous condition" and that the contractor's duty of care extended beyond its work areas to include sections of road that were under its exclusive control.

In essence, the Court of Appeal created a rule of contractor strict liability for accidents occurring in traffic control zones maintained by the contractor to protect the public from

the dangers of road construction. This decision constitutes a significant win for plaintiff's personal injury attorneys, who can now eschew the paltry limits of auto policies for the multimillion-dollar limits of general liability insurance policies by targeting highway contractors who perform traffic control in connection with their construction projects.

The long-term effects of this decision on the insurance premiums of highway contractors and its potential impact on taxpayer costs for highway construction are unknown. In the near term, highway contractors wishing to protect themselves from expanded liability, should seriously consider subcontracting this scope of work to insured traffic control contractors. They should also consult their own insurance experts or Finch, Thornton & Baird, LLP to review their contracts and insurance policies to ensure that this exposure is adequately covered by insurance and indemnity agreements. ■

To schedule a review of your company's insurance program or contracts, please contact David W. Smiley, Esq. of Finch, Thornton & Baird, LLP at (858) 737-3100.

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