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Court Says Workers Left Jobless by Power Plant Explosion Can't Sue for Lost Wages

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About 50 workers who were not physically injured in the 2010 explosion at Middletown's Kleen Energy power plant, but who lost their jobs in the aftermath of the blast, will not be allowed to sue for lost wages, according to a unanimous state Supreme Court ruling.

In the 6-0 decision, the justices said case law in most parts of the country does not permit such lawsuits.

According to court documents, the plaintiffs are employees of subcontractors at the power plant. On average, the workers lost out on two to three months of work due to the explosion. Their lawyers said the combined sum of lost income came to around \$1 million.

The plaintiffs sued Kleen Energy Systems and O&G Industries of Torrington, which served as the general contractor for the construction project at the plant. Several other companies involved in the construction were also named.

"We conclude that the defendants, whose alleged negligence caused the explosion at the power plant, did not owe a duty of care to the plaintiffs, who were employees that sustained only economic losses as a result of the explosion," Justice Richard Robinson wrote.

"Recognizing a duty of care in this factual context appears likely to result in a significant increase in litigation, without a corresponding increase in the safe operation of industrial sites such as the power plant."

The blast took place during the construction process, killing six workers and injuring 50 others on Feb. 7, 2010. The explosion occurred when workers used pressurized natural gas to clean out debris from piping in preparation for making the power plant operational. The force of the gas propels debris through the line until it is eventually ejected through open-ended piping. The procedure is called a "gas blow."

During the procedure, the natural gas ignited and exploded. The state later banned the "gas blow" practice.

Federal regulators fined several companies more than \$16 million for 371 alleged safety and workplace violations, but those penalties were later greatly reduced in agreements the contractors reached with the federal government. Damage from the explosion has since been fixed and the 620-megawatt plant is back in operation.

The lawsuit brought by the workers who lost their jobs after the explosion was initially filed in Middletown Superior Court but was later transferred to the complex litigation docket in Hartford. The defendants filed motions to strike the complaint, citing public policy in arguing that the plaintiffs alleged no actual injuries—personal or property—and that the defendants owed no duty to prevent the plaintiffs' lost wages. Superior Court Judge William Bright Jr. agreed and dismissed the claims.

The plaintiffs next appealed the trial court's ruling. Joseph Barnes, of The Reardon Law Firm in New London, argued the appeal. Barnes could not immediately be reached for comment following the Supreme Court decision.

"The plaintiff workers reasonably relied upon the defendant construction professionals including the general contractor and design professionals to properly manage, supervise and design the Kleen Energy construction project and to supervise and properly administer the subject gas blow," Barnes argued in court briefs to the justices. "Respectfully, the plaintiff workers should be permitted the same opportunity to seek redress for the economic losses they sustained as a result of this explosion as the defendant contractors and design professionals are afforded."

Proloy Das, who now practices at Murtha Cullina in Hartford, represents the defendants in the appeal. Das asked the court where the line would be drawn for such claims. For instance, if the workers could claim damages for work lost to the blast, would local businesses who had benefited from the influx of construction workers to the area also have a claim for lost revenues?

"If the court had recognized a cause of action here, it would have opened the litigation floodgates whenever there's an accident," Das said after the justices released their opinion. "The decision draws the proper line by limiting the universe of plaintiffs to those who have been tangibly harmed, either by physical injury or property damage."

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