

February 13, 2013

Illegal Workers Can Recover Lost Wages for Texas Tort Claims

By Sherry Travers

A recent decision from the Fifth District Court of Appeals in Dallas held that federal immigration laws do not preclude illegal workers from recovering damages, including lost wages, for Texas tort claims.

In *Grocers Supply, Inc. v. Cabello*, 2012 Tex. App. LEXIS 10681 (Tex. App. — Dallas Dec. 21, 2012, no. pet. h.), three individuals — all illegal aliens — successfully sued Grocers Supply and one of its drivers for injuries they sustained in a collision with a Grocers Supply truck. Part of the damages awarded by the jury included monies for lost wages and lost earning capacity. Grocers Supply and its driver appealed the award, contending the individuals' work-related damage claims were preempted by federal immigration laws. In rejecting this argument, the court of appeals conducted an exhaustive analysis of the Immigration Reform and Control Act (IRCA) and related U.S. Supreme Court decisions.

The court began its analysis noting there was no language in the IRCA expressly precluding illegal aliens from recovering wage-related damages for state law tort claims. The court further noted that, absent an express preclusion of recovery for wage-related claims, there is a presumption that Congress did not intend to preempt state tort law in enacting the IRCA.

The court then examined the IRCA's legislative history, concluding that it is an employment-driven statute designed to combat illegal immigration by discouraging employers from employing undocumented workers which, in turn, discourages such workers from illegally entering the country in search of employment opportunities. In short, the IRCA's primary purpose was to reduce the flow of illegal immigration into the country by removing the "employment magnet" that draws undocumented workers to the United States. The IRCA, accordingly, regulates only employers and aliens seeking, or engaging in, unauthorized employment. Nothing in the IRCA's legislative history suggests it was ever intended to regulate health and safety matters, including personal injury tort claims, which are generally left to state regulation. Accordingly, the IRCA does not pre-empt Texas tort laws and illegal aliens may, like U.S. residents, recover tort damages, including lost wages for tort-related injuries.

The court noted the tension between federal immigration law prohibiting illegal aliens from being employed and state tort law simultaneously allowing their recovery of wage-related damages, but concluded this tension was legally permissible because Texas tort law occupies an entirely different field than immigration law and does not require citizenship or other lawful residency as a

prerequisite to recovering damages. Further, barring injured parties from recovery in tort actions solely because of their citizenship or residency status would improperly relieve wrongdoers of liability for their negligent actions just because the injured party happened to be in the country illegally. This was not, in the court's opinion, a result that Congress intended when enacting the IRCA, especially given the lack of evidence suggesting or establishing that potential damage awards — as opposed to jobs — incentivize illegal aliens to enter the country.

This decision is important for any Texas employer that does not subscribe to workers' compensation coverage because employees of a non-subscribing employer retain their common law right to pursue negligence claims against their employer. It is also important for subscribing employers that have employees who have elected to waive their right to workers' compensation benefits and retain their common law right to sue their employer for work-related injuries. Employers in both instances may be held liable under state tort law for wage-related damages sustained by an illegal alien, despite the fact the employee was an undocumented worker and illegally employed at the time of their injury.

[Sherry Travers](#) is a Shareholder in Littler Mendelson's Dallas office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, or Ms. Travers at stravers@littler.com.