

TAX LETTER

Two Important Court Cases

Close to the end of 2008, there were two possible precedent setting court rulings which we believed that you may be interested. One was ruled by the California Court of Appeal concerning “independent contractors”, the other was a Federal case regarding “due process” under the 6th Amendment.

The California Case: A General Contractor engaged a Sub-Contractor for part of a construction project. This is a licensed Sub-Contractor, and is properly covered by required worker’s compensation insurance acceptable to the General Contractor. However, this Sub-Contractor is a small business with limited manpower and has the need to hire other independent Sub-Sub Contractors to help and to complete the work. For many years, this Sub-Contractor and the Sub-Sub Contractors arrangement work well together and usually manage to finish their project(s) with no problem. This time something happened and one of the independent Sub-Sub Contractors was injured on the job. The coverage under the worker’s compensation insurance of the Sub-Contractor, as determined by the carrier, did not extend to the injured Sub-Sub Contractor. Since the Sub-Contractor is a small organization and lack of substantial resource, the injured Sub-Sub Contractor decided to demand compensation from the General Contractor. Upon refusal by the General Contractor, the injured Sub-Sub Contractor filed a complaint in the California Superior Court naming the General Contractor as the defendant. The Superior Court gave summary judgment for the defendant General Contractor citing that the independent Sub-Sub Contractor does not have the right to sue the General Contractor.

The injured Sub-Sub Contractor appealed. In December 2008, the California Appeal Court sent the case back to the Superior Court ruling that the independent Sub-Sub Contractor does have the right to skip the Sub-contractor and sue the General Contractor. (For further information of this case, please refer to : Tverberg v. Filler Construction, Inc.,12-5-2008).

The Federal Case: A very large Accounting Firm was involved in the promotion and implementation of certain abusive “Tax Shelter” scheme. A total of 13 senior members and/or partners of the Firm were prosecuted by the Federal Government. According to their internal policies, the Firm will provide, within the ability of the Firm, almost unlimited legal and financial assistance to the defendants’ defense. The US attorney responsible for the prosecution of this case was found to exert undue influence and pressure on the Firm causing the Firm to impose conditions and upper limits on the advancement of legal fees to the defendants, and eventually ended all funding assistance. The US District Court judge ruled that the government’s actions deprived the defendants’ rights to “Substantive Due Process” and to “Counsel” under the Fifth and Sixth

Amendments of the Constitution, therefore, ordered all charges against the defendants to be dropped and all related indictments dismissed.

The Government appealed the District Court's decision to the 2nd Circuit Court of Appeal. In August 2008, the 2nd Circuit found that the exertion of overwhelming influence on the Accounting Firm by the Government amounted to "State Action" to unjustifiably interfere with the defendants' relationship with their Counsels, and their ability to defend themselves. Therefore, the Government violated the defendants' Sixth Amendment rights to Counsel, and affirmed the District Court's order of dismissal of the indictments against the defendants. (For detail information of this case, please refer to "United States v Stein, et al).

DISCLAIMER : We are not attorneys and we have no intention of offering legal advice to our clients and readers. The above cases are described for general interest purposes only. If you need more information and/or advice about the cases, please consult your attorney.