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RECENT DEVELOPMENT

DESIGN KITCHEN AND BATHS v. LAGOS: AN UNDOCUMENTED ALIEN INJURED IN THE COURSE OF HIS EMPLOYMENT IS ENTITLED TO RECEIVE WORKERS' COMPENSATION BENEFITS UNDER THE MARYLAND WORKERS' COMPENSATION ACT

By: Jacob Y. Statman

The Maryland Court of Appeals recently held that an undocumented alien injured in the course of his employment is entitled to receive workers' compensation benefits where the injury would be otherwise compensable, but for his illegal status. *Design Kitchen & Baths v. Lagos*, 388 Md. 718, 882 A.2d 817 (2005). In a case of first impression in Maryland, the Court reached its decision after a thorough statutory analysis of the Maryland Workers' Compensation Act (the "Act"), a discussion of other state's workers' compensation acts, and the Supreme Court's recent decision in *Hoffman v. NLRB*, 535 U.S. 137, 122 S. Ct. 1275 (2002). *Lagos*, 388 Md. at 718, 882 A.2d at 817.

On August 20, 2001, Diego E. Lagos suffered an injury to his left hand while operating a saw in the course of his employment with Design Kitchen and Baths. The injury required two surgeries, as well as significant additional medical treatment. As a result of the injuries, Lagos filed a claim for compensation under the Act. The parties agreed that the injury would normally be compensable; however, the Defendant insurer ("Appellant") insisted that because of Lagos' illegal status, he was not entitled to receive benefits. The Maryland Workers' Compensation Commission found that Lagos had suffered "an accidental injury arising out of and in the course of employment," and awarded Lagos benefits.

The Appellant then filed a petition for judicial review in the Circuit Court for Montgomery County, alleging that because of Lagos' illegal status, he was not entitled to receive workers' compensation benefits. The circuit court granted Lagos' cross motion for summary judgment and affirmed the decision of the Workers' Compensation Commission. The Appellant filed a timely appeal to the Court of Special Appeals.

However, before that court could act, the Court of Appeals of Maryland, on its own motion, granted certiorari to decide the sole issue of whether under the Act, undocumented aliens were entitled to receive workers' compensation benefits.

The Appellant contended that Lagos' status as an undocumented alien prohibited his legal employment, and thus, his entitlement to workers' compensation benefits. *Id.* at 724, 882 A.2d at 821. Specifically, any alleged contract of employment would be void under the Immigration Reform and Control Act of 1986 ("IRCA") because Lagos did not have a social security number. *Id.* IRCA requires a potential employee to have a valid social security number before he can enter into an employment contract. *Id.* Additionally, the Appellant argued that because Section 9-202 of the Labor and Employment Article is silent on the issue of whether or not undocumented aliens are entitled to benefits, liberal interpretation of the statute is neither required nor permitted. *Lagos*, 388 Md. at 725, 882 A.2d at 821. Section 9-202 states in part:

- (a) In general. – except as otherwise provided, an individual, including a minor, is a covered employee while in the service of an employer under an express or implied contract of apprenticeship or hire.
- (b) Unlawful employment – Minors – A minor may be a covered employee under this section even if the minor is unlawfully employed.

Lagos, 388 Md. at 727-28, 882 A.2d at 823. The appellant relied heavily on the Virginia case of *Granados v. Windson Development Corp.*, 509 S.E.2d 290 (1999). *Lagos*, 388 Md. at 726, 882 A.2d at 822. In *Granados*, the Virginia Supreme Court was faced with the same issue of whether to allow undocumented aliens to receive workers' compensation benefits. *Lagos*, 388 Md. at 726-27, 882 A.2d at 822. The Virginia statute was similar to Section 9-202, in that it did not specifically mention undocumented aliens, and yet the court still held that under IRCA, it would not be permissible for the injured undocumented alien to receive workers' compensation benefits. *Lagos*, 388 Md. at 727, 882 A.2d at 822. Only as a response to that decision, did the Virginia legislature amend the statute to specifically include undocumented aliens. *Id.*

After a thorough analysis of the canons of statutory construction, the Court of Appeals made it clear that this was not a situation where the statute was ambiguous. *Id.* at 729, 882 A.2d at 824. Lagos argued that he was a "covered employee" because he met both parts of the test

set out in Section 9-202. *Lagos*, 388 Md. at 727, 882 A.2d at 822. First, he was in the service of an employer, and second, he was working under an express or implied contract of hire. *Id.* However, the Appellant maintained that because the statute specifically includes minors, a class of persons that would normally not be entitled to benefits, the legislature would have also included undocumented aliens in the statute, if the statute was to apply to them. *Id.* The Court was not persuaded, stating that because Section 9-202 is a remedial statute it must be interpreted liberally in favor of the party it seeks to protect, and statutes often do not mention “every one, or category, of the subjects to which they apply.” *Lagos*, 388 Md. at 730, 882 A.2d at 824.

Having determined that the public policy and legislative history behind Section 9-202 clearly showed the legislature’s intent to exclude undocumented aliens as a class of persons eligible to receive benefits, the Court next looked to how other states had decided the same issue. *Lagos*, 388 Md. at 733, 882 A.2d at 827. The Court of Appeals pointed out that with the exception of one, all other states, which had statutes where the word “alien” was mentioned, had decided that undocumented aliens should be entitled to receive workers’ compensation benefits. *Id.* (citations omitted). The Court also pointed out that in cases where a states’ statutes mentioned the word “alien,” they did not distinguish between documented and undocumented aliens and allowed all to receive workers’ compensation benefits. *Id.* at 734, 882 A.2d at 827 (citations omitted).

After identifying the states that allowed undocumented aliens to receive benefits, the Court noted that with the exception of Virginia, whose legislature overturned its high court’s decision, only Wyoming did not allow undocumented aliens to receive workers’ compensation. *Id.* The Court of Appeals, distinguished the Wyoming statute because it expressly listed “aliens authorized to work by the United States Department of Justice,” as a class of persons eligible to receive workers’ compensation. *Id.* at 735, 882 A.2d at 828.

As a final argument, the Appellant contended that the recent decision of the United States Supreme Court in *Hoffman v. NLRB*, 535 U.S. 137 (2002), made it clear that IRCA preempts State workers’ compensation acts, and therefore must preclude any undocumented alien from receiving workers’ compensation benefits. *Lagos*, 388 Md. at 735-36, 882 A.2d at 828. In *Hoffman*, the Supreme Court addressed whether an undocumented alien, who fraudulently produced citizenship papers, was eligible to receive backpay for being

wrongfully terminated for pro-union activity. *Lagos*, 388 Md. at 735-36, 882 A.2d at 828. The Court held that since the Plaintiff was not legally employed to begin with, he could not be awarded backpay. *Id.* The Court of Appeals distinguished *Hoffman* from the case *sub judice* in that the appellant in that case was terminated for his participation in a union organizing campaign, while Lagos was injured in the course of his employment; and the appellant in *Hoffman* actually provided fraudulent working documents, as opposed to this case, where Lagos just left the space for a social security number blank. *Lagos*, 388 Md. at 726, 882 A.2d at 822.

Judge Harrell was the lone dissenter in this case. *Id.* at 740, 882 A.2d at 830. He reached his dissent by utilizing the plain language rule of statutory construction; holding that because Section 9-202 does not make any mention of undocumented aliens, but says specifically “unless otherwise provided,” only specifically mentioned classes could receive benefits. *Lagos*, 388 Md. at 740, 882 A.2d at 830.

In deciding that undocumented aliens are entitled to receive workers’ compensation benefits, Maryland has joined a long list of states that have already done so. In reaching its decision, the Court wanted to ensure that undocumented aliens would also be taken care of under the exclusivity of remedy principle of workers’ compensation, as opposed to taking the long and costly road of litigation, where many months could go by before the injured employee would see any recovery.