

## IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

IRMA RIFFLE, Administratrix of the  
Estate of Edgar Riffle, Jr., deceased,

FILED

2006 NOV 22 A 9:55

Plaintiff,

v.

ADELL CHANDLER  
CIRCUIT CLERK  
CABELL WV

Civil Action No: 05-C-0438  
Judge John L. Cummings

C.J. HUGHES CONSTRUCTION COMPANY,  
INC., a West Virginia corporation; and  
CONTRACTORS RENTAL CORPORATION,  
a West Virginia corporation,

Defendants.

**ORDER DISMISSING CONTRACTORS RENTAL CORPORATION**

On a previous day, Contractors Rental Corporation filed a Motion to Dismiss Plaintiff's claims against them arguing that Virginia law applied to the present case and Virginia did not recognize the deliberate intent exception to Workers' Compensation immunity. Plaintiff filed a response brief to which Defendant replied. After Defendant's reply, the Plaintiff filed a sur-reply brief. The parties argued the Motion on September 28, 2006. After review of the pleadings and hearing the arguments of counsel, this Court rules as follows:

1. Plaintiff's decedent, Edgar Riffle, was a resident of the state of West Virginia.
2. Plaintiff's decedent was working for Contractors Rental Corporation, a West Virginia corporate entity, at the time of his death. Plaintiff never worked for C.J. Hughes Construction Company, Inc.
3. Plaintiff's decedent never worked for Contractors Rental in the State of West Virginia. Rather, he only worked for this Defendant in the Commonwealth of Virginia.
4. Edgar Riffle was hired for the Virginia job out of a Portsmouth, Ohio Union Hall.
5. Edgar Riffle passed away in a workplace incident in Culpepper, Virginia.

6. Contractors Rental Corporation paid Workers' Compensation premiums arising from Mr. Riffle's employment to the Commonwealth of Virginia.

7. Plaintiff receives Workers' Compensation benefits from the Commonwealth of Virginia.

8. Both Virginia and West Virginia have enacted Workers' Compensation statutes that provide immunity from suit to an employer when an employee is injured on the job. Only West Virginia recognizes an exception to this immunity, more commonly known as the deliberate intent exception, that is codified at West Virginia Code § 23-4-2 (2006). Under *McGilton v. U. S. Xpress Enterprises, Inc.* 214 W. Va. 600 (2003), for a worker who is injured in a foreign state to be eligible for the benefits of the West Virginia Workers' Compensation Act, including the right to sue his employer under the deliberate intent statute, the worker must have worked regularly in West Virginia prior to his injury, and the injury must have occurred while he was temporarily working in the foreign state. None of this occurred in the present case. It is undisputed that Plaintiff's decedent never worked for the Defendant in the State of West Virginia. He was hired to work in Virginia and only worked in that Commonwealth. Other than the residency of the parties, there is simply nothing about the facts and circumstances of this case relating to West Virginia. Therefore, the law of Virginia applies to this case with respect to the claims made against Contractor's Rental, Inc.

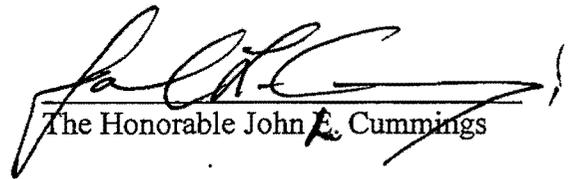
WHEREFORE, the Court hereby ORDERS, ADJUDGES and DECREES that Plaintiff cannot sustain a cause of action against Contractors Rental, Inc. under the West Virginia deliberate intent statute and those claims are hereby DISMISSED WITH PREJUDICE. The Court notes that the Defendant has also moved to dismiss C.J. Hughes Construction Company under the so-called Virginia Umbrella Liability Statute. The Court is making no ruling at this

time on this issue and C.J. Hughes Construction Company remains a Defendant in this matter.  
The Court will entertain this motion if and when the Defendant decides to renew the Motion.

The exceptions and objections of Plaintiff are noted.

The Circuit Clerk is ORDERED to mail certified copies of this Order to all counsel of record.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2006.

  
The Honorable John R. Cummings

Prepared by:



John R. Fowler (WVSB #1255)  
Michael P. Markins (WVSB #8825)

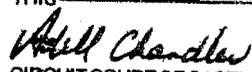
John R. Fowler, PLLC  
United Center Suite 1190  
500 Virginia Street East  
Charleston, WV 25301  
(304) 343-7721

Counsel for Defendants

Approved as to form:

\_\_\_\_\_  
J. Timothy DiPiero, Esq.  
DiTRAPANO, BARRETT & DiPIERO, PLLC  
604 Virginia Street East  
Charleston, WV 25301

Barry Casto, Esq.  
CASTO & CASTO, LC  
214 Fourth Street  
Point Pleasant, WV 25550

STATE OF WEST VIRGINIA  
COUNTY OF CABELL  
ADELL CHANDLER, CLERK OF THE CIRCUIT  
COURT FOR THE COUNTY AND STATE AFORESAID  
DO HEREBY CERTIFY THAT THE FOREGOING IS  
A TRUE COPY FROM THE RECORDS OF SAID COURT  
ENTERED ON \_\_\_\_\_  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT  
THIS \_\_\_\_\_ JAN - 7 2010  
 CLERK  
CIRCUIT COURT OF CABELL COUNTY WEST VIRGINIA

ENTERED Circuit Court Civil Order Book  
No. 204 Page 217 this  
NOV 22 2006

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

IRMA RIFFLE, Administratrix of the  
Estate of Edgar Riffle, Jr., deceased,

Plaintiff,

v.

Civil Action No: 05-C-0438  
Judge Jane Husted

C.J. HUGHES CONSTRUCTION COMPANY,  
INC., a West Virginia corporation; and  
CONTRACTORS RENTAL CORPORATION,  
a West Virginia corporation,

Defendants.

FILED  
2009 AUG 17 P 4:11  
ADELL CHANDLER  
CIRCUIT CLERK  
CABELL WV

**ORDER DENYING MOTION TO RECONSIDER  
AND UPHOLDING DISMISSAL OF CONTRACTORS RENTAL CORPORATION**

On a previous day, Contractors Rental Corporation filed a Motion to Dismiss Plaintiff's claims against them arguing that Virginia law applied to the present case and Virginia did not recognize a deliberate intent exception to its Workers' Compensation immunity. Plaintiff filed a response brief to which Defendant replied. After Defendant's reply, the Plaintiff filed a surreply brief. The parties argued the Motion on September 28, 2006. As a result of this series of events, Judge Cummings dismissed Contractors Rental Corporation from this matter by Order dated November 22, 2006.

On November 13, 2006, Plaintiff filed a motion to reconsider which was heard on December 11, 2006 by Judge Cummings. No order was issued after this hearing, as the Court took the matter under advisement. Thereafter, a status conference was held on March 25, 2009 before this Court with additional briefing, as requested, on this issue occurring on April 9, 2009, April 13, 2009 and April 14, 2009.

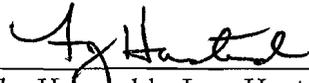
After review of the pleadings and hearing the arguments of counsel, and for good cause shown, the Court rules that the Motion to Reconsider should be DENIED.

WHEREFORE, the Court hereby ORDERS, ADJUDGES and DECREES that Plaintiff's Motion to Reconsider is DENIED as she cannot sustain a cause of action against Contractors Rental, Inc. under the West Virginia deliberate intent statute and those claims remain DISMISSED WITH PREJUDICE. The Court finds that there is no just reason for delay and directs an entry of judgment.

The exceptions and objections of Plaintiff are noted.

The Circuit Clerk is ORDERED to mail certified copies of this Order to all counsel of record.

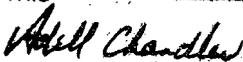
Dated this 17th day of August 2009

  
The Honorable Jane Husted

Prepared by:

  
John R. Fowler (WVSB #1255)  
**JOHN R. FOWLER, PLLC**  
United Center Suite 1190  
500 Virginia Street East  
Charleston, WV 25301  
(304) 343-7721  
*Counsel for Defendants*

ENTERED Circuit Court Civil Order Book  
No. 221 Page 125 this  
AUG 17 2009

STATE OF WEST VIRGINIA  
COUNTY OF CABELL  
ADELL CHANDLER, CLERK OF THE CIRCUIT  
COURT FOR THE COUNTY AND STATE AFORESAID  
DO HEREBY CERTIFY THAT THE FOREGOING IS  
A TRUE COPY FROM THE RECORDS OF SAID COURT  
ENTERED ON \_\_\_\_\_  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT  
THIS JAN - 7 2010  
 CLERK  
CIRCUIT COURT OF CABELL COUNTY WEST VIRGINIA

Approved as to form:

  
J. Timothy DiPiero, Esq. (WVSB #1020)  
**DITRAPANO, BARRETT & DIPIERO, PLLC**  
604 Virginia Street East  
Charleston, WV 25301

Barry Casto, Esq.  
CASTO & CASTO, LC  
214 Fourth Street  
Point Pleasant, WV 25550