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SUPREME COURT OF NEW JERSEY
DOCKET NO. 090537

ERWIN CAMPOVERDE,

PLAINTIFF-APPELLANT
PETITIONER,

V.

NY-NJ LINK DEVELOPER, LLC,
MACQUARIE GROUP LIMITED
I/S/H/A MACQUORIE GROUP
LIMITED, KIEWIT DEVELOPMENT
COMPANY, AND THE PORT
AUTHORITY OF NEW YORK AND NEW JERSEY,
DEFENDANTS-RESPONDENTS,
AND

KS ENGINEERS, PC,
DEFENDANT.

Sat Below: Mawla, J.A.D., Natali, J.A.D.
Vinci J.A.D.

Honorable Justices:

Petitioner Erwin Campoverde respectfully submits this Supplemental Brief
per the Court's November 3, 2025 Order.

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ARGUMENT

The Court has asked the parties to address “the applicable standard under New Jersey law for determining whether a general contractor owes a duty to a subcontractor’s employees for the purpose of determining liability for the injuries sustained by a subcontractor’s employee.”¹

Historically, a general contractor has enjoyed broad immunity from liability for injuries to a subcontractor's employee arising from the condition of the premises or the way the work was performed. Muhammad v. New Jersey Transit, 176 N.J. 185, 198–99 (2003); Wolczak v. Nat'l Elec. Products Corp., 66 N.J. Super. 64, 71 (App. Div. 1961). The premise is that a general contractor “may assume that the independent contractor and her employees are sufficiently skilled to recognize the dangers associated with their task and adjust their methods accordingly to ensure their own safety.” Accardi v. Enviro-Pak Sys. Co., 317 N.J. Super. 457, 463 (App.

¹ The relationships among the parties in this case are as follows:

- The Port Authority owns the Goethals Bridge.
- The Port Authority hired NY-NJ Link to replace the bridge. Under the contract, NY-NJ Link is responsible for the design, finance, construction, and post-construction operations and maintenance of the Bridge Replacement Project, which was expected to last about 40 years. App. Div. Appx (“A”) 581-85 (describing various aspects of duties among the contracting parties).
- NY-NJ Link hired Kiewit-Weeks-Massman (KWM)
- KWM hired Mr. Campoverde.

Div. 1999); Muhammad, supra, 176 N.J. 199. Nor is a general contractor vicariously liable for a subcontractor's negligence that injured its employee. Raimo v. Fischer, 372 N.J. Super. 448 (App. Div. 2004).

In Alloway v. Bradlees, Inc., 157 N.J. 221, 230 (1999), this Court said that in determining whether a general contractor owes a duty of care, a court should perform the usual duty assessment by identifying, weighing, and balancing a combination of factors, a primary one being the foreseeability of the risk of injury, both its nature and severity. Alloway, supra, 157 N.J. 221. Additional considerations in determining the existence of a duty include “the relationship of the parties, the nature of the attendant risk, the opportunity and ability to exercise care, and the public interest in the proposed solution.” Alloway, supra, 157 N.J. 221 (quoting Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 439 (1993)). Ultimately, “[t]he analysis leading to the imposition of a duty of reasonable care ... must satisfy ‘an abiding sense of basic fairness under all of the circumstances in light of considerations of public policy.’” Ibid.

As applied to general contractors, the “exercise of merely such general superintendence as is necessary to [ensure] that the subcontractor performs his agreement” does not create a duty of care to the subcontractor’s employee, New Jersey courts have held. Muhammad, supra, 176 N.J. 199; Wolczak, supra, 66 N.J. Super. 71. However, a duty of care does exist where the general contractor retains

control of the manner and means of performing the subcontracted work. Muhammad, supra, 176 N.J. 198; Wolczak, supra, 66 N.J. Super. 64 ("[a]bsent control over the job location or direction of the manner in which the delegated tasks are carried out, the general contractor is not liable for injuries to employees of the subcontractor resulting from either the condition of the premises or the manner in which the work is performed"); Majestic Realty Associates, Inc., supra, 30 N.J. 430, 431 (entities who engage independent contractors are generally not liable for the negligent acts of the contractor unless the entity controls "the manner and means of the doing of the work which is the subject of the contract"). A general contractor may also be liable where he knowingly engages an incompetent subcontractor or where the work contracted for constitutes a nuisance *per se*, namely, is inherently dangerous. Majestic Realty Associates, Inc., supra, 30 N.J. 431.

Alloway, supra, 157 N.J. 221, illustrates the analysis under current law. In that case, a truck driver employed by an excavating subcontractor had agreed to deliver crushed stone to a paving (general) contractor for a construction project. Alloway, supra, 157 N.J. 225. There was no written contract between the general contractor and the subcontractor, and the subcontractor paid its own drivers, bought its own insurance, and maintained its own vehicles. Alloway, supra, 157 N.J. 221. The driver was injured while attempting to unload the stone at the work site because of a defective mechanical component of the dump truck. Alloway, supra, 157 N.J. 221.

The driver had previously experienced problems with the truck's lifting mechanism and, the day before the accident, brought this to the attention of her supervisor, who was also an employee of the general contractor. Alloway, supra, 157 N.J. 221. The driver then drove the truck to the general contractor's garage, where the general contractor's superintendent and another employee attempted to correct the problem. Alloway, supra, 157 N.J. 221. The driver then drove the truck to another construction site, followed by the superintendent, and the lifting mechanism again failed, prompting the superintendent to use a piece of steel to manually move a lever to make it work, before telling the driver that a cable line needed to be fixed. Ibid. This was never done, and the next day, the driver tried to manually engage the mechanism just as the superintendent had done the day before, except she used her arm, resulting in serious injuries. Alloway, supra, 157 N.J. 221.

This Court ruled that the general contractor owed a duty of care for the driver's safety under those facts, considering “the foreseeability of harm, the relationship between the parties, and the opportunity and capacity to take corrective action.” Alloway, supra, 157 N.J. 221. The risk of injury was “clearly foreseeable,” since there was “actual knowledge” on the part of at least three of the general contractor's employees, including two supervisors, that the truck was defective. Alloway, supra, 157 N.J. 221. “Under the circumstances, it was reasonably foreseeable that this defective component presented a danger to a person who would attempt to correct

the defect by manually engaging the mechanism.” Ibid. There was also “a substantial and close relationship between the parties that could and did implicate workplace safety concerns.” Ibid. The subcontractor's principal was also one of the general contractor's employees, and any breakdown of delivery equipment would delay the paving contractor's work. Alloway, supra, 157 N.J. 221. There “was a clear connection between [the driver's] performance on behalf of [the subcontractor] and [the general contractor's] own contractual interests.” This relationship gave the general contractor “both the opportunity and capacity ... to exercise authority and control over the equipment of [the subcontractor] if safety concerns were implicated.” Ibid. Accordingly, “as a matter of fairness and sound policy[,]” the combination of the foreseeability of harm, the relationship between the parties, and the opportunity and capacity to take corrective action supported the imposition of a duty of reasonable care on the general contractor for the safety of the driver on the work site. Alloway, supra, 157 N.J. 221.

The Court applied these same factors in Carvalho v. Toll Bros. & Developers, 143 N.J. 565 (1996) in ruling that a project engineer, who was required to provide an on-site inspector to supervise the materials used and the rate at which the work was performed, owed a duty of care to a laborer employed by one of the subcontractors who was killed when a trench in which he was working collapsed. Carvalho, supra, 143 N.J. 565. A critical factor, again, was the foreseeability of the

risk of harm, with the Court noting that the danger of collapse posed by the deep trenches was apparent and had occurred before. The project engineer's awareness of the risk of harm was “significant in determining the fairness in imposing a duty of care.” Ibid. In addition, the relationship between the parties was contractual, Carvalho, supra, 143 N.J. 565, and contemplated the “active participation and involvement by the engineer in the construction work at the site.” Ibid. In this regard, “[t]he engineer's supervisory responsibility necessarily entailed the observation of existing conditions and the actual performance of the work undertaken by the workers at the site” and thus directly implicated safety concerns, Carvalho, supra, 143 N.J. 565.

The Policies Supporting a Broad Duty of Care for a General Contractor

First, general contractors have the power to correct safety violations or require others to do so because of their overall authority for the site. They can conduct regular inspections and verify subcontractors’ safety practices. They are best positioned to coordinate safety for the entire project, enforce rules, conduct meetings, and remove unsafe subcontractors.

Second, imposing a general duty of reasonable care for site safety provides greater protection for workers exposed to dangerous tasks on such construction projects. These workers usually have no meaningful choice but to work in sometimes

unsafe conditions to keep their jobs, making top-down safety enforcement by general contractors essential.

Third, and in sharp contrast to site workers, general contractors choose whether to undertake a project in the first place and can mitigate risks through insurance and, hopefully, by greater attention to site safety.²

Fourth, broadening the duty of care would provide much greater certainty of New Jersey law and consistent judicial and nonjudicial determinations on the duty question. This contrasts sharply with current law, under which the outcome depends on the specifics of the general contractor's degree of involvement in the work that injured the subcontractor's employee, the contractual provisions between the general contractor and subcontractor, etc. This has made it extremely difficult to predict when a general contractor will be held to have a duty of care and thus potential liability for subcontractor employee injuries. A simpler rule imposing a duty of care on general contractors for the safety of all site workers would allow contractors to much better "anticipate when liability will attach to certain conduct." G.A.-H. v. K.G.G., 238 N.J. 401, 414 (2019) (*quoting Hopkins, supra*, 132 N.J. 439); Estate of

² Broadening the duty of care for general contractors would not eliminate the duty of care that subcontractors also owe.

Nor would broadening the duty of care make a general contractor a guarantor of safety or automatically liable for all injuries at the site. The injured worker must still prove negligence, *i.e.*, that the general contractor failed to provide reasonable and adequate protection and safety to those working at the site.

Desir ex rel. Estiverne v. Vertus, 214 N.J. 303, 322–23 (2013). A simpler rule would also “sensibly, predictably, and fairly govern future conduct.” Coleman v. Martinez, 247 N.J. 319, 337–38 (2021).

Fifth, imposing a general duty of care on general contractors follows modern regulatory law. Under federal OSHA law, a general contractor at a construction site is considered the controlling employer with supervisory authority over the entire jobsite. OSHA rules (*e.g.*, 29 C.F.R. § 1926.16) establish that prime contractors assume overall responsibility for the contract, resulting in joint responsibility with subcontractors for site safety. OSHA's Multi-Employer Worksite Citation Policy holds general contractors responsible for hazards they could reasonably prevent or correct, even if the hazards were created by subcontractors.

In Fernandes v. DAR Dev. Corp., 222 N.J. 390, 405 (2015), this Court said that regulatory law imposing such obligations is an important factor in the duty assessment. “The standard of care is derived from many sources, including codes adopted by the Legislature, regulations adopted by state and federal agencies, and standards adopted by professional organizations. OSHA was enacted ‘to assure so far as possible every working man and woman in the Nation safe and healthful working conditions’ by ‘encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment,’” (*citing* 29 U.S.C.A. § 651(b)(1)). “As authorized by Congress, 29

U.S.C.A. § 655(a), OSHA has promulgated mandatory occupational safety and health standards to further this goal.”

This flows from the earlier decision in Alloway, where the Court said that though “the violation of OSHA regulations without more does not constitute the basis for an independent or direct tort remedy,” “OSHA regulations are pertinent in determining the nature and extent of any duty of care:”

... OSHA regulations are pertinent in determining the nature and extent of any duty of care. We find applicable in the circumstances of this case the well-established principle that the violation of a legislated standard of conduct may be regarded as evidence of negligence if the plaintiff was a member of the class for whose benefit the standard was established. *J.S. v. R.T.H.*, 155 N.J. 330, 349, 714 A.2d 924 (1998); *Carrino v. Novotny*, 78 N.J. 355, 359, 396 A.2d 561 (1979); cf. *Eaton v. Eaton*, 119 N.J. 628, 636, 575 A.2d 858 (1990) (holding the violation of careless driving statute was negligence per se because statute specifically incorporated common-law standard of care).

Alloway, in turn, cited Bortz, *supra*, 151 N.J. Super. 320, where Judge Pressler said, “proof of deviation from a statutory standard of conduct, while not conclusive on the issue of negligence in a civil action, is nevertheless a relevant circumstance to be considered by the trier of fact in assessing tort liability.”

We are persuaded not only as to the supporting rationale of s 874A but also that the multi-faceted test governing its application is here met. It was obviously the legislative intention to ensure the protection of all of the workers on a construction project, irrespective of the identity and status of their various and several employers, by requiring, either by agreement or by operation of law, the designation of a single repository of the responsibility for the safety of them all. The assurance of prospective and continuing compliance by that repository with his responsibility demands, in our view, a right of tort action in those who

are injured when there is a failure of compliance. Cf. *Doloughty v. Blanchard Const. Co.*, 139 N.J.Super. 110, 123-125, 352 A.2d 613 (Law Div.1976). We therefore base plaintiffs' right of action not only on a traditional negligence theory with a statutory mandate providing the source of the legal duty, but also on the policy and rationale of the draft Restatement section. [Bortz, 151 N.J. Super. at 321]

Alloway noted further,

The court in *Bortz, supra*, concluded that the State's statutory imposition of a duty on the general contractor expressed a clear legislative intention “to ensure the protection of all of the workers on a construction project, irrespective of the identity and status of their various and several employers, by requiring, either by agreement or by operation of law, the designation of a single repository of the responsibility for the safety of them all.” 151 N.J.Super. at 321, 376 A.2d 1261; cf. *Dawson v. Bunker Hill Plaza Assocs.*, 289 N.J.Super. 309, 320–21, 673 A.2d 847 (App.Div.1996) (reaffirming state public policy favoring general contractor as single repository of responsibility of safety of all employees on job but declining to extend liability to landowner, upon whom OSHA imposes no affirmative duties).

See also Kane v. Hartz Mountain Indus., Inc., 278 N.J. Super. 129, 142–43 (App. Div. 1994), aff'd, 143 N.J. 141 (1996) (also affirming that OSHA regulations are relevant in determining the existence and scope of a duty of care).

We submit that it’s incongruous for a general contractor to bear primary responsibility for site safety under federal OSHA law yet be able to waive away any duty in tort through the use of contractual provisions purporting to place sole responsibility for site safety on the subcontractor (as the appeals panel noted at page 3 of its decision in this case, where the contract between NY-NJ Link and KWM “required KWM to provide and comply with a health and safety plan, supervise and

inspect its own work, and deemed KWM's failure to 'formally establish, adhere to or enforce a safety policy, procedure, process, or guideline as required by the [h]ealth and [s]afety [p]lan' a 'noncompliance event'; and as NY-NJ Link's Reply Brief in support of its motion for summary judgment stressed—"plaintiff's employer, Kiewit-Weeks-Massman ('KWM') (*as opposed to the defendants*), was responsible for ensuring 'adherence to safety requirements,'" emphasis added). Allowing such contractual clauses to preclude (or be a significant factor in precluding) the imposition of a duty of care on the general contractor to an injured site worker (who was not even party to the general contractor-subcontractor agreement) flies in the face of OSHA regulations (29 C.F.R. § 1926.26) imposing a "non-delegable duty for workplace safety on a general contractor." As this Court said in Fernandes, supra, 222 N.J. 390, "the regulations permit general contractors and subcontractors to make their own agreements with regard to the division of labor, however, "[i]n no case shall the prime contractor be relieved of overall responsibility for compliance with the requirements of this part for all work to be performed under the contract" (*citing* Rules of Construction, 29 C.F.R. § 1926.16 (2014)).³

³ Current law providing that such contractual provisions are a significant factor in determining whether the general contractor owed a duty of care to an injured subcontractor employee is inconsistent with fundamental legal principles as well. A general contractor and subcontractor are free to form an agreement containing such terms, and those terms would govern their respective rights and duties to each other. But such contractual provisions should not be a factor in determining the

The Court should conform New Jersey tort law to match the duty of care for site safety imposed under federal OSHA law and related construction safety standards, by holding that the general contractor of a construction work site owes a duty to provide reasonable and adequate protection and safety to those working at the site, regardless of the degree of involvement by the general contractor with the work that caused the injury and regardless of whether the injured worker was employed by a subcontractor or was an independent worker. This dovetails with the fairness analysis under current duty of care law:

Foreseeability is generally measured by the general contractor's actual knowledge of dangerous conditions. Alloway, supra, 157 N.J. 231–32. In this case, for example, it was plainly foreseeable that a negligent crane operator could hurt a fellow worker on the bridge.

The relationship of the parties: NJ-NY Link hired KWM, and KWM hired Mr. Campoverde, so there was a relationship among the parties.

The nature of the attendant risk was apparent and potentially grave (or fatal), given the high-risk work site and the operation of heavy equipment near other workers, such as Mr. Campoverde.

general contractor's duty in tort to a third party injured site worker who was not a party to the contract.

The opportunity and ability to exercise care -- the general contractor had the power to supervise site safety and ensure only competent employees were retained for the worksite--particularly those operating dangerous heavy equipment near other workers.

The public interest in imposing a broader duty of care is supported by the greater protection that would be afforded to construction workers, the general contractor's ability to guard against liability by insurance and, hopefully, through improved site safety, and by the far greater certainty and stability of such a rule compared to the case by case determinations of duty under current law.

In Coleman, supra, 247 N.J. 319, the Court said that “the law of torts declines to impose a duty of care upon ‘[a]n actor whose conduct has not created a risk of physical or emotional harm to another.’” For construction contract cases, a general contractor chooses to accept responsibility for sometimes massive construction projects in exchange for lucrative payment. This choice to undertake such contracts for significant pay carries with it the responsibility to minimize safety risks to the workers carrying out the work, and, again, this can be planned for in advance through insurance and greater attention to site safety. This applies with particular force to a case like the one before the Court here, where NY-NJ Link entered an enormously lucrative 40 year contract under which it is “responsible for the design, finance, design, construction, operations, and

maintenance of the Goethals Bridge Replacement Project” (A581). Coleman said that duty of care is “a malleable concept that ‘must of necessity adjust to the changing social relations and exigencies and man's relation to his fellows,’” G.A.-H., 238 N.J. 401 (*quoting* J.S. v. R.T.H., 155 N.J. 330, 339 (1998)). The fairness and policy concerns discussed above for this case fall within Coleman’s rationale and further show that it’s ultimately “fair” (per *Alloway* and its progeny) to impose on a general contractor a broad duty to site workers to provide reasonable and adequate protection and safety at the construction site, regardless of how involved the general contractor was in the subcontractor’s work, regardless of who, if anyone, employed the injured worker, and regardless of contractual provisions purporting to foist the duty for site safety upon a subcontractor or anyone else.

If the Court requires anything further, please let us know.

Respectfully submitted,

/s/ Michael Confusione
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Dated: January 8, 2026