
Supreme Court of New Jersey

Docket No. 090537

ERWIN CAMPOVERDE,	:	CIVIL ACTION
<i>Plaintiff-Appellant Petitioner,</i>	:	
vs.	:	ON PETITION FOR
	:	CERTIFICATION FROM A
NY-NJ LINK DEVELOPER, LLC,	:	FINAL JUDGMENT OF THE
MACQUARIE GROUP LIMITED	:	SUPERIOR COURT
i/s/h/a Macquarie Group Limited,	:	OF NEW JERSEY,
KIEWIT DEVELOPMENT	:	APPELLATE DIVISION
COMPANY, and THE PORT	:	
AUTHORITY OF NEW YORK	:	DOCKET NO. A-001174-23
AND NEW JERSEY,	:	
<i>Defendants-Respondents,</i>	:	Sat Below:
- and -	:	HON. HANY MAWLA, J.A.D.,
	:	HON. ARNOLD NATALI, J.A.D.
KS ENGINEERS, PC,	:	HON. ROBERT M. VINCI J.A.D.
<i>Defendant.</i>	:	

SUPPLEMENTAL BRIEF ON BEHALF OF DEFENDANTS-RESPONDENTS

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Date Submitted: February 9, 2026



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**QUESTIONS ASKED IN THE ORDER GRATING THE PETITION FOR
CERTIFICATION**

This Supplemental Respondents' Brief is submitted by NY-NJ Link Developer, LLC ("NY-NJ Link Developer").

This litigation arises from injuries sustained by Plaintiff-Appellant, Edwin Campoverde ("Plaintiff"), on October 26, 2017, while working on the Goethals Bridge Replacement project as an employee of Kiewit-Weeks-Massman ("KWM").

By Order dated October 28, 2025, this Court granted Plaintiff's Petition for Certification "limited to the issue of [a] general contractor['s] liability for injuries to a subcontractor's employees under New Jersey Law." The Court directed the parties to "address, minimally, 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."

Plaintiff's Supplemental Appellant Brief urges a sweeping expansion of New Jersey tort law, one that is inconsistent with decades of precedent. New Jersey limits general contractor liability absent retained control or extraordinary circumstances. The proposed expansion would have far-reaching and adverse consequences, contravene sound public policy, and represent a profound alteration

of settled law, one that should be undertaken, if at all, by the Legislature rather than the courts.

Further, it is significant that Plaintiff abandoned all claims in the proceedings below except those against NY-NJ Link Developer. Plaintiff was injured while working on the Goethals Bridge Replacement project as an employee of KWM, the project's general contractor. NY-NJ Link Developer served solely as the developer.

For these reasons, this Court should completely uphold the Appellate Division's decision in its entirety and affirm that NY-NJ Link Developer bears no liability. As the developer, NY-NJ Link Developer owed no duty to Plaintiff. Nor should this Court expand the duty of care owed by a general contractor to employees of a subcontractor/independent contractor. KWM was a contractor solely responsible for the safety of its employees. Although New Jersey law recognizes three policy-based exceptions to the general rule of non-liability, Plaintiff asks this Court to transform those limited exceptions into a sweeping, generalized duty of care. Such a departure from settled precedent would not only eviscerate those carefully circumscribed exceptions¹, but would effectively

¹ These exceptions are (1) where the general contractor retains control over the means and methods of the independent contractor's work, (2) where the general contractor hires an incompetent contractor, or (#) where the activity contracted for constitutes nuisance per se. See Mavrikidis v. Petullo, 153 N.J. 117, 132

render general contractors virtual insurers of the worksite. Plaintiff's policy arguments provide no sound basis for abandoning decades of established law. This Court should adhere to precedent and reaffirm the well-established rule that a general contractor owes no duty to subcontractor's employees except in the limited circumstances long recognized by New Jersey law.

SHORT BACKGROUND

Plaintiff was working on the New Jersey side of the Goethals Bridge when the accident occurred. The Bridge, which is owned by the Port Authority, connects New Jersey to New York. In 2013, the Port Authority decided to replace the Bridge and entered into an agreement with NY-NJ Link Developer. NY-NJ Link Developer's involvement in the project was limited solely to its interest as the P3 developer and post-construction ownership responsibilities. NY-NJ Link Developer hired KWM to design and construct the replacement Bridge. KWM is a joint venture comprised of Kiewit Infrastructure Co., Weeks Marine, Inc., and Massman Construction Co.

Plaintiff alleges that he was injured when another KWM employee improperly operated an excavator while moving a wooden crane mat, causing the mat to strike Plaintiff in the back. At all relevant times and during the

(1998); Majestic Realty Associates, Inc. v. Toti Contracting Co., 30 NJ 425 (1959).

incident, Plaintiff's work and that of his co-workers was supervised and controlled exclusively by KWM. KWM alone was responsible for directing the work and ensuring the safety of its employees, including Plaintiff.

ARGUMENT

LONG-SETTLED NEW JERSEY LAW HOLDS THAT GENERAL CONTRACTORS ARE NOT RESPONSIBLE FOR THE NEGLIGENCE OF INDEPENDENT CONTRACTORS ABSENT THREE FORESEEABILITY-DRIVEN EXCEPTIONS

It is well-settled law that one who hires independent contractors is not liable for the wrongful conduct of those contractors in the performance of their duties and services. Baldassarre v. Butler, 132 N.J. 278, 291 (1993) (Generally, “the principal is not vicariously liable for the torts of the independent contractor if the principal did not direct or participate in them”). See also Sutuj v. Louis Gargiulo Company, Inc., 2021 WL 48228 *2 (App. Div. Jan. 6, 2021).

The public policy underlying this rule is sound: unlike an ordinary employee, an independent contractor controls how the work is to be done and therefore should be the one charged with the damages that result from its acts. Mavrikidis v. Petullo, 153 N.J. 117, 132 (1998); see also Accardi v. Enviro-Pak Sys. Co., 317 N.J. Super. 457, 463 (App. Div. 1999) (a landowner or 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.”). A general contractor enjoys “broad immunity” from liability for injuries of an employee of a subcontractor resulting from “the manner in which the hired work was performed.” Tarabokia v. Structure Tone, 429 N.J. Super. 103, 112-113 (App. Div. 2012); See also Muhammad v. N.J. Transit, 176 N.J. 185, 198 (2003) quoting Gibilterra v. Rosemawr Homes, 19 N.J. 166, 170, (1955) (“[T]he general principle is that the landowner is under no duty to protect an employee of an independent contractor from the very hazard created by the doing of the contract work[.]”); Pfenninger v. Hunterdon Cent. Regional High School, 338 N.J. Super. 572, 581 (App. Div. 1999) (“[N]either [a landowner nor general contractor] is under a duty to protect an employee of an independent contractor or subcontractor from hazards created by the performance of the contracted work.”).

While a general contractor's immunity is not disturbed by the exercise of mere general superintendence as is necessary to ensure that a subcontractor performs his agreement, there are three possible exceptions to the general rule of no liability for general contractors. Tarabokia v. Structure Tone, 429 N.J. Super. 103 (2021). These three exceptions are: (1) where the principal retains control over the means and methods of the independent contractor’s work, (2) where he engages an incompetent independent contractor, or (3) where the

activity contracted for constitutes nuisance per se. Mavrikidis v. Petullo, 153 N.J. 117, 132 (1998) citing Majestic Realty Associates, Inc. v. Toti Contracting Co., 30 NJ 425, 431 (1959).

In regards to determining whether an independent contractor maintains the right of control, several factors are considered including “(a) the extent of control which, by the agreement, the master may exercise over the details of the work; (b) whether or not the one employed is engaged in a distinct occupation or business; (d) the skill required in the particular occupation; (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (f) the length of time for which the person is employed; (g) the method of payment, whether by the time or by the job; (h) whether or not the work is a part of the regular business of the employer; [and] (i) whether or not the parties believe they are creating the relation of master and servant....” Mavrikidis v. Petullo, 153 N.J. at 132 citing the Restatement (Second) of Agency § 220(2) (1958).

This control from the first exception is distinct from general supervisory control. The control needs to be over the specific means and methods of an independent contractor’s work. See Muhammad v. New Jersey Transit, 176 N.J. 185, 196 (2003) (“An independent contractor is a person who, in carrying on an independent business, contracts to do a piece of work according to his own

methods without being subject to the control of the employer as to the means by which the result is to be accomplished. If, however, the agent is only subject to the general control and direction by the principal, the agent is termed an independent contractor.) Citing AT&T v. Winback and Conserve Program, Inc., 42 F.3d 1421, 1435 (3d Cir. 1994) r., cert. denied, 514 U.S. 1103, 115 S.Ct. 1838, 131 L.Ed.2d 757 (1995).”) (citation modified).

With regard to the second exception, not only does a plaintiff need to prove that the independent contractor was incompetent or unskilled to perform the job for which he was hired but also that the principal knew or had reason to know of the contractor’s incompetence. Mavrikidis v. Petrullo, 153 NJ 117, 137 (1998).

The third exception applies only when specific work is performed that is considered a nuisance per se. Work is considered a nuisance per se if it is “inherently dangerous.” This means that the work is an activity which can be carried on safely only by the exercise of special skill and care, and which involves grave risk of danger to persons or property if negligently done. State, New Jersey Dept. of Environmental Protection v. Cullen, 424 N.J. Super. 566 (2012).

However, more recently, in Alloway v. Bradlees, 157 N.J. 221 (1999), this Court has adopted a “general negligence” approach to determining whether an owner or general contractor owes a duty to an employee of an independent contractor. *Id.* at 230. In Alloway, the court considered “the foreseeability of harm, the relationship

between the parties, and the opportunity and capacity to take corrective action” in determining that the prime contractor owed a duty to plaintiff. *Id.* at 233. “The analysis leading to the imposition of a duty of reasonable care is both fact-specific and principled, and must satisfy an abiding sense of basic fairness under all of the circumstances in light of considerations of public policy.” *Id.* at 230 (quotation modified).

In Alloway, the plaintiff, an employee of the subcontractor hired to transport paving materials, was injured due to a defect in the truck she was driving. The harm was foreseeable because two of the general contractor’s supervisors knew about the defect and had attempted to correct it, and the defect was such that it was reasonably foreseeable that it presented a danger to anyone who would attempt to manually override it. *Id.* at 232. Moreover, the relationship between the general contractor and the subcontractor was “substantial and close” because the subcontractor was owned by one of the general contractor’s supervisors. *Id.* The general contractor also retained the right to dismiss any of the subcontractor’s trucks that were defective. *Id.* at 233. Finally, the court noted that the general contractor had the opportunity and capacity to take corrective action, as indicated by its two supervisors who had attempted to fix the truck. *Id.*

In support of its analysis, the Court relied on its decision in Carvalho v. Toll Brother & Developers, 143 N.J. 565 (1996), where it found that the project engineer

owed a duty to plaintiff, a laborer employed by one of the subcontractors, who was killed when a trench he was working in collapsed. Alloway at 230-231. There had been other trench collapses in the days preceding the accident, and the project engineer's inspector was on site at the time of the accident. Considering "fairness and policy" in imposing a duty of care, the court noted, among other factors, the "foreseeability of the nature and severity of the risk of injury based on the defendant's actual knowledge of dangerous conditions" and its "ability to take corrective measures to rectify the dangerous conditions." Alloway at 231-232, discussing Carvalho, supra. Significantly, in both Alloway and Carvalho, defendants had actual knowledge of a dangerous condition, as well as the opportunity and capacity to intervene.

The approaches by the Alloway and Carvalho courts and the "traditional" approach are not in conflict. The three exceptions of the traditional approach all contemplate a measure of foreseeability. The more control a general contractor has over a subcontractor, the more likely it is that negligent acts or omissions are foreseeable. In Alloway, liability for the general contractor was appropriate because its control over the work and actual knowledge of the alleged hazard. Alloway, 157 N.J. at 232-233. Similarly, only when a general contractor hires an incompetent independent contractor, and it knew or should have known, i.e., it was foreseeable, of the incompetence does the general contractor become liable. Mavrikidis at 137.

Likewise, work is considered to be a nuisance per se if it is “inherently dangerous.” This means that the work is an activity which can be carried on safely only by the exercise of special skill and care, and which involves grave risk of danger to persons or property if negligently done. State, New Jersey Dept. of Environmental Protection v. Cullen, 424 N.J. Super. 566 (2012). As such, any work that is a nuisance per se is foreseeable to be dangerous and there is a need for protective measures.

Here, NY-NJ Link Developer did not maintain control over the means and methods of KWM’s work. As Plaintiff himself testified, KWM hired him, trained him, and provided him with personal protective equipment. His foreman, a KWM employee, held meetings every morning and assigned Plaintiff and the other KWM workers their tasks. The excavator operator was a KWM employee, assigned by the foreman to work with Plaintiff on preparing the crane mats near the trench. Nothing in Plaintiff’s testimony suggests that anyone from NY-NJ Link Developer was present at the construction site or had any say over how KWM performed its work. This case is akin to Majestic, *supra*, where the Supreme Court declined to find that the defendant parking authority retained control over its independent contractor Toti. The Court noted:

In the present case, the suggestion is made that the language of the contract reveals a retention of control by the Authority of the method of Toti's performance sufficient to warrant the application of principles of

respondeat superior in the interest of injured third persons. Our examination of the document convinces us otherwise. The plain import of the provisions is not to confer on the Authority the right to say how the job shall be done; the reservation is limited to supervision for the purpose of seeing that the work is done in accordance with the contract and specifications. The supervisory interest relates to the result to be accomplished, not to the means of accomplishing it. Majestic at 431.

Similarly, any inspections NY-NJ Link Developer performed were limited to supervision for the purpose of seeing that the permanently completed work was done in accordance with the contract and specifications.

Plaintiff's reliance on the second exception fails because KWM was not an incompetent contractor, a point thoroughly addressed and refuted in NY-NJ Link Developer's submissions below. Finally, with regard to the third exception, this activity does not constitute a nuisance per se. Road construction work is not "an activity which can be carried on safely only by the exercise of special skill and care, and which involves grave risk of danger to persons or property if negligently done." Majestic Realty Associates v. Toti Contracting Co., 30 NJ 425 (1959). There is no "peculiar risk", and only ordinary precaution is called for. Mavrikidis, *supra*, at 144. The activity at issue in using an excavator to reposition a crane mat was routine construction work requiring only ordinary precautions to prevent an accident.

This case is also akin to Tarabokia v. Structure Tone, 429 N.J. Super. 103

(2012), where the court found no basis to impose a duty of care upon the general contractor. The general contractor in Tarabokia hired one of the largest electrical contractors in the country, H&B, to perform the electrical work at its construction site. *Id.* at 107. The plaintiff, an employee of H&B, was tasked with setting anchors to support light fixtures in a ceiling support by steel beams, for which he used a special tool. *Id.* at 107-108. Plaintiff developed injuries from the repetitive use of the special tool. *Id.* at 108.

Just as in the case at bar, the plaintiff's employer in Tarabokia hired him through his union, provided him with a safety orientation, and provided his equipment and tools. The plaintiff's employer was required to designate a "competent person" and to hold safety meetings. *Id.* at 110. In finding that the defendant owed no duty to plaintiff, the Tarabokia court noted that "none of defendant's representatives ever discussed with H&B employees how they performed their work, much less directed the manner and means of their performance." *Id.* The court further found it "objectively reasonable" that the defendant expected on-site subcontractors to use their occupational expertise and knowledge to monitor and ensure their own workers' safety. *Id.* at 121. *See also, Andrews v. Jerud*, 2014 WL 4998417 (App. Div. Oct. 8, 2014) (holding that defendant general contractor owed no duty to the plaintiff where there was no evidence the general contractor had removed from the subcontractors the

responsibility for ensuring the safety of their own workers, knew of the dangerous method used by the subcontractor's employee, or affirmatively contributed to create the harm).

Here, similarly, Plaintiff's employer, KWM, was expected to monitor and ensure its own workers' safety. NY-NJ Link Developer did not discuss with KWM how they performed their work and had no authority to direct the manner and means of KWM's work. NY-NJ Link Developer had no actual knowledge of a particular risk to Plaintiff. Therefore, there is no basis for imposing a duty of care upon NY-NJ Link Developer or any of the defendants and the lower court was correct in dismissing the claims against the NY-NJ Link Developer.

The lower courts were correct when they found that there was no basis for finding that NY-NJ Link Developer or any of the defendants breached a duty of care to Plaintiff. In truth, this is a straightforward Workers' Compensation case, because Plaintiff was injured as a result of a negligent co-worker who exercised poor judgment in operating the excavator.

Under comparable fact patterns, in recent cases, the courts have affirmed summary judgment for the defendant owners and contractors. In Sutuj v. Louis Gargiulo, 2021 WL 48228 (App. Div. Jan. 6, 2021), the court affirmed summary judgment in favor of a defendant general contractor where plaintiff, an employee of a subcontractor, was injured when he operated a jackhammer without using

protective goggles. Defendant Louis Gargiulo was the general contractor who subcontracted with plaintiff's employer. The plaintiff only took instructions from his boss or co-worker. The defendant general contractor never instructed the plaintiff's employer on "how to take care of his [employees], or means and methods of how to do the job." *Id.* at *1. The defendant hired the subcontractor because they had performed well in the past, and he was pleased with their finished product. *Id.*

The plaintiff alleged that defendant was negligent for ignoring its duty to provide a safe workplace for him, to supervise, direct, and control the work site to prevent dangerous or hazardous work conditions, and to oversee the safety of the site. *Id.* The plaintiff also claimed the defendant had violated OSHA regulations and the New Jersey Construction Safety Act. *Id.* The defendant moved for summary judgment, arguing that it did not owe plaintiff a duty of care. *Id.* The motion court granted summary judgment, finding that defendant did not owe plaintiff any duty, and the subcontractor was responsible for the safety of its employees. *Id.* Also, concerning the alleged OSHA violations, the court noted that violation of OSHA regulations without more does not constitute the basis for an independent or direct tort remedy. *Id.* at *2.

On appeal, the court affirmed summary judgment in favor of defendant, discussing the foreseeability standard set forth in Alloway v. Bradlees, Inc., 157

N.J. 221 (1999) and Tarabokia v. Structure Tone, 429 N.J. Super. 103 (App. Div. 2012). *Id.* at *3. The Court found no evidence that the defendant knew the plaintiff was not wearing his safety goggles when the incident occurred. *Id.* Moreover, there was no evidence that the subcontractor was incompetent or that the work performed by plaintiff was “inherently dangerous” if performed with the safety equipment provided by his employer. *Id.* Also, given the defendant’s prior relationship with the subcontractor, “it was entitled to assume Adamo and its employees were sufficiently skilled and equipped to recognize any dangers related to their tasks and that they would take measures to ensure their safety.” *Id.* Under these facts, the Court held that the motion court properly granted summary judgment to defendant. *Id.*

Similarly, here, considering the factors in Tarabokia, *supra*, relied upon on Sutuj, there is no basis for finding that NY-NJ Link Developer owed Plaintiff a duty of care nor should the Court expand the duty to NY-NJ Link Developer. NY-NJ Link Developer did not instruct KWM on the means and methods of how to do its job. Plaintiff took his instructions only from his foreman, a fellow KWM employee. KWM was a well-known contractor hired because of its history of completing other large-scale construction projects; NY-NJ Link Developer was entitled to assume that KWM and its employees would take measures to ensure their safety. Finally, road construction is not an inherently

dangerous activity.

Thus, as Sutuj demonstrates, under the precedent of Alloway and Tarabokia, *supra*, summary judgment was warranted and properly granted here. See also, Gage v College of New Jersey, 2019 WL 1312850 (App. Div. March 22, 2019), (where the Appellate Division addressed the question of whether defendant owner and its project engineer owed a duty of care to plaintiff, an employee of an independent contractor and affirmed summary judgment for defendants finding there was no evidence that they directed, supervised, or managed the subcontractors work directed how the subcontractor performed its work or act as foreman for the project); Lata v. Loughlin, 2018 WL 6164789, *3 (App. Div. Nov. 26, 2018) (affirming summary judgment for general contractor upon finding there was no duty of care owed because plaintiff's employer was "solely responsible for hiring its workers, directing their work, and ensuring safety", there was no "special relationship" between the general contractor and plaintiff's employer, and general contractor was unaware that plaintiff was not wearing his safety harness).

In the case at hand, Plaintiff's Supplemental Appellant Brief also, seemingly intentionally, omits the fact that NY-NJ Link Developer (the only remaining defendant) was the developer and not the general contractor. The actual general contractor here was KWM, Plaintiff's employer. This was shown

extensively in the papers below. KWM was the demolition and construction contractor and Plaintiff's direct employer. Any attempt to recharacterize NY-NJ Link Developer as the "general contractor" improperly circumvents the Workers' Compensation exclusive remedy doctrine, which bars Plaintiff's claims against his employer. This Court should not permit that end run by expanding the duty of care owed by developers well beyond its established bounds.

Plaintiff's Supplemental Appellant Brief advances policy arguments for expanding the duty owed by general contractors, none of which are availing. Plaintiff first claims that the general contractors should owe a broader duty to employees of independent contractors because they have overall authority of the site and are positioned to coordinate the project, enforce rules, and remove unsafe subcontractors. This argument overlooks the fact that New Jersey law already addresses those concerns through its well-defined exceptions. A general contractor can be held liable for hiring an independent contractor and when it hires an incompetent contractor or affirmatively controls the means and methods of the work. That level of control is fundamentally distinct from general supervisory authority over the project as a whole. See Muhammad v. New Jersey Transit, 176 N.J. 185, 196 (2003). General supervisory control should not allow an employee of a subcontractor to sue when the independent contractor

is the one in the best position to properly address possibly negligent conditions. Indeed, independent contractors are often hired for their expertise to both complete the work and to do so safely.

Plaintiff's second policy argument asserts that expanding a general contractor's duty would afford greater protection to workers exposed to dangerous conditions. However, long-established New Jersey law recognizes that an independent contractor is the best party suited to ensure a worker enjoys the necessary and appropriate protections. An owner or 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.'" See Accardi v. Enviro-Pak Sys. Co., 317 N.J. Super. 457, 463 (App. Div. 1999). Plaintiff's policy argument thus amounts to little more than an attempt to circumvent the exclusive-remedy scheme of the Workers' Compensation Act. The Legislature has already determined that, outside the exceptions long recognized by this Court, Workers' Compensation provides the exclusive remedy for workplace injuries.

Plaintiff's third policy argument is equally unpersuasive. Plaintiff contends that the general contractor chooses whether to undertake a project in the first place and can mitigate risk through insurance and greater attention to site safety. This argument disregards the independent contractor's own decision

to undertake the work, ignores the established requirement that general contractors select competent contractors, and would effectively render general contractors insurers of the entire worksite. Independent contractor – those who are actually doing the work – remain in the best position to determine how the job can be performed safely. Requiring general contractors to insure against every negligent act or omission of a competent independent contractor would impermissibly shift responsibility away from those who control the work and fundamentally alter settled law.

Plaintiff's fourth policy argument advocates that a broader duty would somehow provide greater certainty of New Jersey law. This argument fails for the opposite reason. Expanding a general contractor's duty beyond settled limits would undermine, not enhance, predictability. As the law stands, and should continue to stand, a general contractor is not liable except in three specific situations grounded in sound public policy. Those exceptions have been reaffirmed and informed by considerations of foreseeability following Alloway and Carvalho. They do not displace the traditional framework. To the contrary, each of the three exceptions inherently contemplate foreseeability: (1) the greater the control a general contractor exercises over a subcontractor's work, the more foreseeable negligent acts or omissions become; (2) liability for hiring an incompetent contractor arises only when the contractor's incompetence was known

or reasonably foreseeable; and (3) work deemed inherently dangerous is, by definition, foreseeably hazardous absent the exercise of special skill and care.

This established approach strikes the proper balance between predictability and basic fairness. Abandoning it would effectively impose strict liability on general contractors for all worksite accidents, an outcome unsupported by precedent and inconsistent with New Jersey law.

Plaintiff's final policy argument that imposing a general duty of care for general contractors would require general contractors to follow "modern regulatory law" is misplaced. Plaintiff relies on OSHA regulations to argue for an expanded duty of care, but OSHA regulations do not create independent legal duties or private rights of action. As New Jersey Courts have consistently held, a violation of OSHA regulations without more does not provide a basis for an independent or direct tort remedy. Sutuj, 2021 WL 48228 at *2; 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). OSHA regulations do not create or expand a general contractor's duty of care and provide no independent basis for tort liability. Where a general contractor does not control the means and methods of the work, OSHA compliance obligations cannot be transformed into a common-law duty owed to a subcontractor's employees.

A general contractor's duty to oversee worksite safety under OSHA should not lead it to require it to become responsible for every negligent act or omission

that occurs on a worksite. See *Tarabokia*, 429 N.J. Super. at 118. (“Assuring compliance with OSHA regulations simply does not amount to the kind of control over the subcontractor’s work sufficient to implicate any duty on defendant’s part to protect the subcontractor’s employees.”). (citation modified). Subcontractors are often hired to perform work because they have an expertise in both how to perform the work and how to do so safely. This coupled with a lack of control over the means and methods of work shows that a general contractor should not have a duty of care over that work.

Applying the foreseeability principles recognized in Alloway and Carvalho with the traditional exceptions ensures a predictable and balanced approach to constructions-site accident cases that is fair to workers, subcontractors, and general contractors, while preserving decades of established New Jersey law relied upon by contractors employing hundreds of thousands of workers in this State. Such a sweeping change would upend settled expectations and risk discouraging reputable contractors from undertaking projects in this State, an outcome with serious consequences for employment and economic activity that is better left to the Legislature than the courts.

CONCLUSION

As such, as shown above NY-NJ Link Developer did not breach any duty of care to Plaintiff and the duty of care should not be expanded beyond what is already proscribed by law. Thus, the lower court properly granted summary judgment dismissing the claims against NY-NJ Link Developer.

Dated: February 9, 2026

Respectfully Submitted,

By: /s/ Frank Thompson
FRANK THOMPSON, ESQ.

By: /s/ Colleen Ready
COLLEEN READY, ESQ.