

BEFORE THE INDUSTRIAL ACCIDENT BOARD  
OF THE STATE OF DELAWARE

SMILY ESTEVAM,

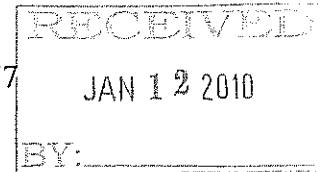
Claimant,

v.

MARCELO SILVA, D/B/A GIRAFA  
CONSTRUCTION and WM COMPANY,  
INC.,

Employers.

Hearing No. 1342877



**ORDER UPON HEARING TO DETERMINE  
INSURANCE LIABILITY OF GENERAL CONTRACTOR**

**WHEREAS**, Claimant, a Delaware resident, filed a Petition to Determine Compensation Due alleging that he was injured in a compensable work-related accident which occurred on September 2, 2009 while he was employed by Marcelo Silva, d/b/a Girafa Construction ("Girafa"), in which Claimant fell off of a house located at the "Bayside" resort property in Selbyville, Delaware; and

**WHEREAS**, at the time of the September 2, 2009 accident, Girafa was hired as a carpentry and cement subcontractor for WM Company, Inc. ("WM"), the general contractor assigned to the "Bayside" construction project; and

**WHEREAS**, on September 10, 2009, Marcelo Silva executed an affidavit swearing under oath that at the time of Claimant's accident, Claimant was an employee of Girafa; and

**WHEREAS**, at the time of the September 2, 2009 accident, Girafa was insured by a policy of worker's compensation insurance issued by the Pennsylvania State Workers' Insurance Fund ("PASWIF") under policy number 05675357 with effective dates of April 21, 2009 to April 21, 2010; and

**WHEREAS**, Claimant presented a claim for the injuries he sustained in the September 2, 2009 accident to PASWIF; and

**WHEREAS**, on September 15, 2009, PASWIF denied Claimant's claim on the basis that Claimant did not meet the statutory definition of a Pennsylvania employee entitled to extraterritorial Pennsylvania worker's compensation coverage set forth by 77 P.S. § 411.2; and

**WHEREAS**, on December 17, 2009, the Industrial Accident Board convened a Hearing to determine whether Girafa was insured by Delaware worker's compensation insurance at the time of Claimant's September 2, 2009 accident, and whether it is currently so insured, and due notice of the Hearing was provided to Girafa and WM; and

**WHEREAS**, Girafa failed to appear at the December 17, 2009 Hearing and failed to present evidence that it was insured by a policy of Delaware worker's compensation coverage at the time of Claimant's September 2, 2009 accident and ongoing, as required by 19 *Del. C.* § 2371 *et seq.*; and

**WHEREAS**, after the December 17, 2009, Hearing the Board made the following findings of fact and conclusions of law:

(a) That Girafa failed to carry Delaware worker's compensation insurance at the time of Claimant's September 2, 2009 accident.

(b) That Girafa was fined for its failure to carry Delaware worker's compensation insurance at the time of Claimant's September 2, 2009 accident, in the amount of \$250.00 per day commencing October 16, 2009, and continuing until proof of current Delaware worker's compensation insurance is provided to the Department of Labor; and

(c) That Girafa was ordered to post a bond in the amount of \$40,000.00 against Claimant's past, present, and future medical expenses, temporary total disability, and other worker's compensation benefits, said bond to be posted within twenty (20) days of the date of the Order; and

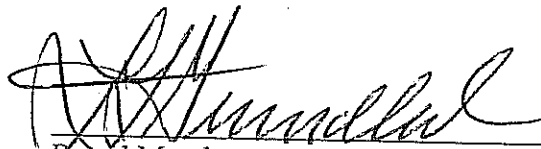
WHEREAS, the Board convened a Hearing on January 7, 2010 on claimant's request to deem WM, as the general contractor which hired Girafa, an uninsured subcontractor, the insurer of claimant's worker's compensation claim pursuant to 19 Del. C. § 2311(a)(5);

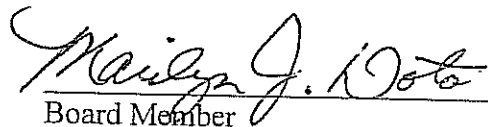
NOW, THEREFORE, upon consideration of the record and the evidence submitted, the Board hereby **ORDERS** as follows:

(A) The Board hereby finds that WM, as a general contractor, failed to obtain from Girafa, as its subcontractor, a "certification of insurance in force under [19 Del. C. ch. 23]", as required by 19 Del. C. § 2311(a)(5), in that while Girafa carried worker's compensation insurance through SWIF at the time of claimant's accident, such insurance did not cover claims arising under the Delaware Worker's Compensation Act, 19 Del. C. ch. 23; Claimant did not meet the statutory definition of a Pennsylvania employee entitled to extraterritorial Pennsylvania worker's compensation coverage set forth by 77 P.S. § 411.2, and was therefore not entitled to coverage through SWIF, thus rendering Girafa uninsured;

(B) Pursuant to 19 Del. C. § 2311(a)(5), as a result of WM's failure to obtain from Girafa certification of Delaware worker's compensation insurance, WM's insurer, Liberty Mutual Insurance Company, is hereby deemed to be the insurer of claimant's worker's compensation claims arising out of claimant's September 2, 2009 industrial accident.

It is SO ORDERED this 7<sup>th</sup> day of JANUARY, 2010.

  
Board Member

  
Board Member

Date of Mailing: 1-8-10

