



Iowa Research Online
The University of Iowa's Institutional Repository

College of Law Publications

4-12-1999

No comp for kids' work

Marc Linder

University of Iowa College of Law

© 1999 Marc Linder

The National Law Journal 21 (1999), 1 page.

Hosted by Iowa Research Online. For more information please contact: lib-ir@uiowa.edu.

No comp for kids' work

By Marc Linder SPECIAL TO THE NATIONAL LAW JOURNAL

JUST CALLING a 10-year-old child a rear admiral, contrary to popular wisdom, really does make her a rear admiral—at least according to many state courts. When child newspaper carriers are injured, publishers contest workers' compensation coverage by calling little kids self-employed businessmen and businesswomen, not entitled to free medical and rehabilitative care. And judges buy it!

The gruesome 1998 murder of 11-year-old Angelica Padilla in Connecticut (where children of any age are permitted to deliver papers) underscored the fact that "newspaper delivery is a very high-risk job," said Editor & Publisher magazine. In New York state, newspaper delivery-related mishaps are the leading cause of death and injury among child workers.

The fate of 13-year-old Stephen Johnson, seriously injured by a truck while delivering the Dubois (Pa.) Courier, is instructive. The publisher paid him for each paper he delivered, and subscribers paid the company directly, but Pennsylvania appellate judges held, in *Johnson v. Workmen's Compensation Appeal Board*, 631 A.2d 693 (Pa. Commonw. 1993), that as a self-employed businessman, Stephen was unprotected by workers' comp, and they accepted the publisher's mind-boggling claim that he "was essentially acting as a delivery service, such as UPS or Federal Express."

It took a century of struggle before Judge James Monen declared, "It is beyond sophistry and closer to outright dishonesty to characterize a 10-year-old party to a contract as...an independent contractor." *Larson v. Hometown Communications Inc.*, (Neb. Workers' Comp. Ct., March 15, 1993). But this rebuff didn't stop the Fremont (Neb.) Tribune from contesting the right to medical benefits of 12-year-old Jennifer Larson, left in a permanent vegetative state after being struck by a car while delivering the paper. The Fremont Tribune told carriers when, where and how to deliver the paper and how to deal with customers. It prescribed collection methods and appearance standards. Even so,

it claimed that Jennifer and fellow carriers as young as 10 were "merely subscribers of the newspaper" who happened to resell it.

The case, heard before the Nebraska Supreme Court, was backed by three publishers' associations and two newspapers as amici curiae. Nothing seems to embarrass publishers. Despite a century-long understanding that workers' comp must include those who lack the leverage to charge consumers for the cost of their job-related

tion of workers' comp coverage means that carriers either don't receive the medical or rehabilitative treatment they need, or that they (or their parents) confront large hospital bills. Some newspapers enable carriers to buy accident insurance at group rates, but it isn't comprehensive. By contrast, workers' comp places no limit on coverage for medical treatment necessary for work-related injuries.

Publishers have convinced the public that home delivery is an entirely separate business dominated by prepubescent entrepreneurs going through a rite of passage, which needs no government regulation. They issue such instructions as, "If you collect from your customers, NEVER enter the home of someone who is not a personal friend of your family," but they fail to see this directive as a contradiction in terms.

Publishers' efforts to avoid liability aren't new, but their challenges to workers' comp coverage have become more coordinated and blatant. While Jennifer Larson's case made its way through the courts, the Nebraska Press Association prevailed on the state Legislature three times to kill proposed amendments to the workers' compensation statute that would have extended benefits to carriers.

Workers' comp laws in Wisconsin, Maryland and Kentucky cover all carriers, while the state of New York requires coverage only for child carriers. But more legislatures—namely those of Arkansas, Georgia, Oregon, Mississippi, Montana, North

Dakota and Washington state—exclude them. In all the other states, there is no statutory inclusion or exclusion, and judges have held that kids are not covered by workers' comp because, if the publisher doesn't teach them how to throw papers, they don't control the carriers.

If newspaper delivery is dangerous work, child labor laws should be amended to ban it. If society lets publishers run part of their lucrative businesses with 10-year-olds, workers' compensation coverage should be made mandatory. **ML**

injuries, publishers have persuaded legislatures and courts to exclude paper carriers.

Unfunny business

Injury rates among the nation's 450,000 newspaper carriers aren't tracked, but incomplete data reveal that from 1992 to 1997, 99 news vendors were killed on the job, 11 of them younger than 18. Depriva-