

What Employers Can Learn from SeaWorld's Killer Whale Case

Certain occupations, from construction workers to policemen, come with a certain amount of risk. That's why it's sometimes difficult to win worker's compensation suits. The employer uses the inherent dangers of the job as a defense. After all, the risk is considered part of "normal working conditions" accepted by the employee. But a federal appeals court recently challenged this assumption by weighing in on a highly visible case. Employers and employees alike should take note.

The case involved the [tragic 2010 death of SeaWorld trainer Dawn Brancheau](#), pulled underwater and thrashed about by a killer whale during a performance at SeaWorld Orlando. SeaWorld asserted that trainers accepted this risk, of injury or even death, as a natural working condition of the job.

The Department of Labor, looking at the situation from the perspective of the Occupational Safety and Health Act (OSHA), contended that steps could have been taken to reduce the risk of drowning and traumatic injuries at SeaWorld. Specifically, they cited [three safety concerns](#), attaching fines to the violations:

1. Exposing employees to a fall hazard by not having a railing (\$5,000)
2. Exposing employees to struck-by and drowning hazards when interacting with killer whales (\$70,000)
3. Failing to equip outdoor electrical receptacles in the stadium with weatherproof enclosures (no fine)

SeaWorld appealed the fines, arguing that the fines reflected a "fundamental lack of understanding of the safety requirements associated with marine mammal care."

In a [two-to-one opinion](#) released Friday, April 11, 2014, the

D.C. Circuit Court held SeaWorld responsible. They noted that [SeaWorld violated the OSHA Act's general duty clause](#), citing substantial evidence that the company recognized working with killer whales was dangerous and unpredictable, and that hazards are preventable.

Pennsylvania Follows Suit

There was a similar theme in two local cases, one of which was handled by Martin Law, where decisions by the Pennsylvania Supreme Court determined that the injuries suffered in these cases did not occur during "normal working conditions."

- When a Bucks County liquor store was robbed at gunpoint, the manager, Greg Kochanowicz, was understandably shaken. Suffering from post-traumatic stress syndrome as a result, he was unable to return to work and filed for benefits, which began but were halted after the Pennsylvania Liquor Control Board appealed to the Commonwealth Court. However, the Pennsylvania Supreme Court reinstated compensation, including back pay, and vacated the Commonwealth Court decision, stating that one robbery in the course of 30 years on the job showed that it was not "normal working conditions." (For more details on this case, see our release, "PA Supreme Ct: Liquor Store Robbery Injury Not Normal Working Condition.")
- The Pennsylvania Supreme Court ordered workers compensation benefits for State Trooper Philip Payes, who hit and killed a mentally ill woman who ran into his car. The court deemed that this occurrence was not in the normal course of risk for police officers.

At Martin Law, we continue to advocate for safer work environments and protect employees and employers alike. Clients who have questions regarding issues discussed in this article, or any workers' compensation matter, should feel free to call us at (215) 587-8400.