

In This Issue:

August 2011

The California Supreme Court has resolved conflicting court rulings, holding that an independent contractor, not the entity engaging the services of the independent contractor, is liable for the workplace injury of the contractor's own employee.

California Supreme Court Resolves Who Is Responsible if an Employee of an Independent Contractor Is Injured on the Job

By Helene Wasserman

In *Seabright Insurance Company v. US Airways*, No. S182508 (Aug. 22, 2011), the California Supreme Court held that, when an employee of an independent contractor is injured due to the failure of the independent contractor to comply with workplace safety requirements, liability for the injury is with the employee's employer, not the entity engaging the services of the contractor.

In this case, US Airways used a conveyor to move luggage at San Francisco International Airport. The airline had responsibility for maintaining the conveyor and ensuring its safety. To fulfill this responsibility, the airline engaged the services of an independent contractor, Lloyd W. Aubry Co. Significantly, the airline neither directed nor had any of its employees participate in Aubry's work.

Anthony Verdon Lujan, an employee of Aubry, was injured while inspecting the safety mechanisms on the conveyor. Seabright, which was Aubry's workers' compensation insurance carrier, paid for the employee's injuries, but sued the airline, claiming that the airline caused the injury.

The airline sought summary judgment, relying on a series of cases, including *Privette v. Superior Court* (1993) 5 Cal. 4th 689 and *Hooker v. Department of Transportation* (2002) 27 Cal. 4th 198, which stand for the proposition that a party who engages the services of an independent contractor can only be held liable for workplace injuries of the independent contractor's employees if the party who engages the independent contractor retained control over the independent contractor's work and exercised control in a way that "affirmatively contributed" to the injury. Although the trial court agreed with the airline that it did not retain control over the independent contractor's employees, granting summary judgment in the airline's favor, the First District Court of Appeal reversed.

The California Supreme Court reversed the First District's conclusion that the airline had a nondelegable duty to ensure that the conveyor had safety guards and that such failure "affirmatively contributed" to the employee's injury. The issue addressed by the California Supreme Court was whether the airline could, and did, delegate to the independent contractor any duty it owed to the contractor's employees to comply

with Cal-OSHA’s safety requirements. Preliminarily, the court addressed the presumption that the party who engages an independent contractor delegates responsibility for workplace safety to the independent contractor (as to the independent contractor’s employees). After analyzing *Privette* and its progeny, the court held that “an independent contractor’s hirer presumptively delegates to that contractor its tort law duty to provide a safe workplace for its own employees.”

The court went on to address the nondelegable duties doctrine, and held that it was inapplicable. While the airline had a nondelegable duty to provide a safe workplace for its own employees, it did not have such a duty with respect to the independent contractor’s employees – the independent contractor had that duty. As a result, summary judgment in favor of the airline was appropriate.

Employers, whether they are independent contractors retained to perform services for another person, or the party engaging the services of an independent contractor, should heed the warnings from this case. It is essential that the division of duties and responsibilities between the entities, both regarding the manner in which work is to be completed and who will (and will not) be directing the employees actually performing the contracted-for services, be clearly delineated.

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