

The Morrison Law Journal
September 2011
Volume VI, Edition 9

At Least A Point Of Clarity: California Supreme Court Rules That Injured Employee Of Independent Contractor May Not Pursue A Claim Against The Hirer Of The Independent Contractor Based Upon The Hirer's Violation Of Cal/OSHA Work Place Safety Regulations...

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As many are aware, the California Supreme Court ruled in Privette v. Superior Court (1993) 5 Cal.4th 689 ("Privette") that, in general, an employee of an independent contractor injured in the workplace may not sue the party that hired the independent contractor for his or her workplace injuries¹. In SeaBright Insurance Company v. U.S. Airways, Inc. (2011) 52 Cal.4th 590 ("SeaBright Insurance Company") the California Supreme Court considered whether the Privette rule applies when the party that hired the independent contractor (i.e. the hiring party) failed to comply with mandatory workplace safety requirements concerning the precise subject matter of the agreement with the independent contractor and the injuries were alleged to have occurred as a direct consequence of that failure. After considering the matter, the California Supreme Court held that the Privette rule, broadly precluding liability, would apply.

The facts of the SeaBright Insurance Company case are common enough. In that case, Defendant U.S. Airways, which uses a conveyor to move luggage at the San Francisco International Airport under a permit with airport owner, hired independent contractor Lloyd W. Aubry Company ("Aubry") to maintain and repair the conveyor (US Airways, by virtue of its permit with the airport owner, was required to maintain and repair the conveyor). In that case, it was alleged that Anthony Verdon Lujan ("Lujan"), an employee of Aubry, was inspecting the conveyor as an employee of Aubry when his arm was caught in its moving parts causing him serious injuries. The SeaBright Insurance Company ("SeaBright"), Aubry's worker's compensation insurer, paid Lujan benefits based on the injury and then sued U.S. Airways claiming the airline caused Lujan's injury, and sought to recover what it paid in benefits on the basis that the conveyor lacked certain safety guards required by applicable regulations. Lujan also intervened as a Plaintiff in the action, alleging causes of action for negligence and premises liability.

¹ The California Supreme Court in Privette held that the doctrine of peculiar risk afforded no basis for an injured employee of an independent contractor to recover damages in tort from the hirer of the independent contractor/employer when the hiring party did not cause the workers' injuries.

At the trial court level, U.S. Airways sought summary judgment based upon the holding in Privette. U.S. Airways also relied upon the California Supreme Court decision in Hooker v. Department of Transportation (2002) 27 Cal.4th 198 ("Hooker"), where the California Supreme Court held that the hirer of an independent contractor can be liable for a workplace injury of the contractor's employee only if the hirer retained control over the contractor's work, and exercised that control in a way that "affirmatively contributed" to the employee's workplace injury. U.S. Airways, arguing both the Privette and Hooker cases, argued that it did not affirmatively contribute to employee Lujan's injuries.

SeaBright and Lujan countered the Motion for Summary Judgment with a declaration by an accident reconstruction expert who stated that the lack of safety guards at "nip points" on the conveyor violated Cal/OSHA regulations [see, Section 6300, et seq. (Cal Occupational Safety and Health Act of 1973 (Cal/OSHA)), California Code of Regulations, Title 8, §§ 3999, 4002].

The Trial Court struck the Plaintiffs' expert's declaration insofar as it discussed causation and found no evidence that U.S. Airways had affirmatively contributed to the accident, and granted summary judgment. On appeal, the Court of Appeal held that, under Cal/OSHA regulations, Defendant U.S. Airways had a non-delegable duty to ensure that the conveyor had safety guards and that the question of whether the airline's failure to perform this duty "affirmatively contributed" to the Plaintiff's injury remained a triable issue of fact under the Hooker decision. The Court of Appeal also noted conflicting views among the Courts of Appeal as to how the holdings in Privette and Hooker would apply when the hirer of an independent contractor failed to comply with Cal/OSHA regulations, and the Court followed a line of decisions holding that such omissions can expose the hirer of the independent contractor to liability.

To resolve the conflicts in the Court of Appeals, the California Supreme Court granted Defendant U.S. Airways' Petition for Review.

After discussing its opinions in Privette, Toland v. Sunland Housing Group, Inc. (1998) 18 Cal.4th 253 ("Toland")², and the Hooker case, as well as the more recent decision in Kinsman v. Unocal Corp. (2005) 37 Cal.4th 569 ("Kinsman")³, the Court ruled that the Privette line of decisions establishes that an independent contractor's hirer presumptively delegates to the independent

² In Toland, the California Supreme Court ruled that the Privette no liability rule applied even where the hirer of the independent contractor failed to specify as part of its contract that the independent contractor should take special precautions to avert the peculiar risk at issue in the personal injury case.

³ In Kinsman, the California Supreme Court reflected on the strong policy "in favor of delegation of responsibility and assignment of liability" to independent contractors.

contractor its tort law liability to provide a safe workplace for the contractor's employees.

In its holding, the California Supreme Court rejected the premise that tort law duty, if any, that a hirer owes under Cal/OSHA regulations to an employee of an independent contractor is non-delegable.⁴ Based upon that holding, the state Supreme Court then ruled that the Plaintiffs could not recover in tort from Defendant U.S. Airways on the theory that the independent contractor's employee's workplace injuries resulted from the Defendant's breach of what the Plaintiffs describe as a non-delegable duty under Cal/OSHA regulations, finding that there was a presumptive and valid delegation of duties.

The SeaBright decision will certainly have important impacts with workplace injury cases in the future. One may also anticipate that the plaintiff personal injury bar may attempt to address the holding with legislative action.

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⁴ In a concurring opinion, Justice Werdegard agreed that US Airways was entitled to summary judgment but argued that the legislature had not intended that there would be such a broad implied delegable duty with respect to Cal/OSHA regulations as found by the majority of the Court.