



Bradley P. Boyer

bboyer@rmkb.com

[213.312.2047](tel:213.312.2047)



Sandra K. Wootton

swootton@rmkb.com

[213.312.2008](tel:213.312.2008)

New Ruling Modifies *Privette* Case Law:

Seabright Insurance Company v. U.S. Airways, Inc.

Dear Colleagues and Friends of the Firm:

There has been much confusion in the business community as to when a company is liable for workplace injuries sustained by the employee of an independent contractor as a result of the company's failure to comply with Cal-OSHA requirements and regulations. However, on August 22, 2011, the California Supreme Court brought much needed clarity to this issue. In *Seabright Insurance Company v. U.S. Airways, Inc.*, the Court determined that a company cannot be held liable for injuries to an independent contractor's employee resulting from the company's failure to comply with Cal-OSHA regulations or statutes - as this duty to such employees is presumptively delegated to the independent contractor.

In *Seabright*, the trial court granted summary judgment in favor of U.S. Airways based upon the *Privette* decision and its progeny - and determined that there was no evidence that U.S. Airways affirmatively contributed to a work site accident involving an independent contractor's employee. The appellate court reversed, finding that U.S. Airways had nondelegable duties to ensure a safe workplace under Cal-OSHA and that there was a triable issue of fact as to whether their failure to perform this duty affirmatively contributed to the employee's injuries.

The California Supreme Court performed a detailed analysis of *Privette* and its progeny and reversed the appellate court. In doing so, it rejected the proposition that the company who hires the independent contractor has non-delegable duties to comply with Cal-OSHA. Instead, the Court determined that an employer may delegate to the independent contractor its tort law duty to provide a safe workplace to the independent contractor's employees. Upon retention, such a duty is implicitly delegated to the independent contractor as a condition of their hiring.

This ruling is a significant victory for companies who hire independent contractors and provides them with greater protections. This opinion makes it much harder for injured employees to assert claims for injuries

outside of the workers compensation system.

For more information, or if you would like a copy of the opinion, please contact [Brad Boyer](#) or [Saundra Wootton](#).

San Francisco	Los Angeles	San Jose	Redwood City	New York	Boston
201 Spear St Suite 1000 San Francisco CA 94105 ph (415) 543- 4800 fax (415) 972- 6301	515 South Flower St Suite 1100 Los Angeles CA 90071 ph (213) 312-2000 fax (213) 312- 2001	50 W. San Fernando St Suite 1400 San Jose CA 95113 ph (408) 287-6262 fax (408) 918- 4501	1001 Marshall St Suite 500 Redwood City CA 94063 ph (650) 364-8200 fax (650) 780- 1701	750 Third Avenue 25th Floor New York NY 10017 ph (212) 668.5927 fax (212) 668.5929	60 State St Suite 700 Boston MA 02109 ph (617) 973- 5720 fax (617) 973- 5721