

Employers May Face Vicarious Liability for Dangerous Acts of Independent Contractors

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Generally, businesses who hire independent contractors are absolved from any liability for the wrongful acts of those independent contractors unless the work is “inherently dangerous activity.” The concept is that businesses cannot contract away the responsibility for dangerous activities. This concept was recently addressed in *Stout v. Johnson*, 159 Wn. App. 344 (2011), where a criminal sued a bail bond company for injuries that he sustained when the bail bond company’s independent contractor – *i.e.*, the bounty hunter – apprehended him after he failed to appear in court for a scheduled hearing.

In *Stout*, the plaintiff-criminal had posted a \$50,000 bail bond for felony drug charges. He missed his court appearance, so the bail bond company retained a bounty hunter to apprehend him. When he tried to escape by car, the bounty hunter blocked his pathway, causing him to drive off the road and collide with a tree, sustaining injuries which resulted in the amputation of his leg. The criminal sued the bail bond company, claiming that it was liable for the acts of the bounty hunter since bounty hunting is inherently dangerous. The bail bond company defended claiming that, because the bounty hunter was an independent contractor and not its employee, it was not responsible for his actions. The trial court agreed and dismissed the plaintiff-criminal’s claims against it.

On appeal, the criminal argued that the “inherently dangerous activity” doctrine makes businesses responsible for the actions of their independent contractors. The *Stout* court started its analysis with the general rule that *respondeat superior* does impose liability on an employer for the torts of an employee who is acting on the employer’s behalf. Thus, if the bounty hunter had been the bail bond company’s employee the bail bond company could have been liable.

However, a business that hires an independent contractor is not generally vicariously liable for the actions of that contractor. The *Stout* court did recognize that an exception exists when an employer of an independent contractor attempts to delegate its duty of care to an independent contractor and escape liability in inherently dangerous situations. The *Stout* court accepted, for purposes of argument, that bounty hunting was an inherently dangerous activity, yet it still held in favor of the employer.

The *Stout* court explained that, when a person takes part in an activity with knowledge that there is unavoidable risk of injury, he or she is not protected by the “inherently dangerous activity” exception to the independent contractor rule. In other words, the criminal assumed the risk by running and was not an innocent third party who had been injured by an independent contractor engaged in an inherently dangerous activity. When the plaintiff drove his car down the gravel road in an attempt to avoid the apprehension, he was aware that the bounty hunter could ram his car and force it off the road. He knew there was a risk of at least some peril when he absconded.

The takeaways from *Stout* are that, while employers are legally responsible for the acts of their employees, generally they are not liable for the acts of their independent contractors. That is often a reason why businesses retain independent contractors to perform certain functions, and in most cases, there is a cost savings to the business. However, in certain situations, the *Stout* court emphasized that businesses will be liable for the acts of their independent contractors when it is an “inherently dangerous activity.” Nonetheless, the *Stout* court emphasized that, when the person who is injured by the inherently dangerous activity has caused and/or brought the harm from the dangerous activity on himself or herself, he or she will not be able to recover damages from the employer for injury resulting from the dangerous activity.