For Companies Hiring Negligent Independent Contractors in Massachusetts, Liability Ends when the Contract Ends

February 22, 2022

Generally, hirers of independent contractors, called principals, are not liable for the negligent actions of those contractors. There are exceptions to the rule. Where a principal exercises a considerable amount of control over the activities of a supposedly independent contractor, courts will reclassify the relationship as an “employer-employee” relationship, and will hold the principal liable for the contractor's negligence. Likewise, where the independent contractor is performing an inherently dangerous activity for the principal, the principal will likely be held liable for any injury caused by that activity.

Another important exception exists where the principal hires a contractor who is not competent and careful to perform work for a third party, or to perform work which requires competence and care to avoid physical harm.[1]

This rule provides incentive for employers to contract only with those they know to be competent professionals at the contemplated work. State by state, it is up to courts and legislatures to decide whether to adopt this provision, and if they do so, to set the limits of the exception. The US Court of Appeals for the First Circuit recently addressed these issues in a case out of Massachusetts.

In *Forbes v. BB&S Acquisition Corp.*, a lumber company, contracted with a trucking carrier to transport treated lumber from Rhode Island to Dalton, Massachusetts.[2] After completing the delivery and while en route to his next job, the truck driver allegedly ran a red light and killed the driver of another vehicle. The family of the deceased sued the truck driver, the trucking carrier, and the lumber company, whose job the truck driver had just completed. The family argued that the lumber company was negligent in hiring the trucking carrier as an independent contractor.

The US District Court for the District of Massachusetts found that Massachusetts law did not extend liability for an employer of an independent contractor beyond the conclusion of the work contracted for. On appeal, the First Circuit affirmed. It held at the outset that the “competent and careful contractor” exception is not the law in Massachusetts. The Massachusetts Supreme Judicial Court had never explicitly adopted the rule, and the First Circuit was powerless to “blaze a new trail that the [Massachusetts] courts have not invited.”[3]

More importantly, the court went on to say that even if Massachusetts *had* adopted the provision, it would not apply to hold the lumber company liable in this case. Under Massachusetts common law, a defendant is not liable “where [the] defendant no longer had control over the party that caused harm to a plaintiff.” [4] The carrier had completed the delivery (and thus the contract) and was en route to his next job when the accident occurred. The court cited cases from Illinois and New Mexico to demonstrate that “[s]tate courts in other jurisdictions have [also] rejected [the Plaintiff's] argument.” [5]

As states continue to consider whether to adopt the “competent and careful contractor” exception, courts will continue to grapple with its limits. At least in federal courts in Massachusetts, it is clear: the exception does not extend an employer's liability beyond the termination of the contract, unless state law holds otherwise.

[1] RESTATEMENT (SECOND) OF TORTS § 411, at 376.
[2] *Forbes v. BB&S Acquisition Corp.*, F.4th 22 (1st Cir. 2021).
[3] *Id*. at 25 (quoting Jones v. Secord, 684 F.3d 1, 11 (1st Cir. 2012)).
[4] *Id*. at 26 (citation omitted).
[5] *Id*.