

Massachusetts SJC Reaffirms Corsetti While Closing the Door on Negligent Hiring Claims as an Alternative Theory

By **Joseph S. Bussiere**

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In August, the Massachusetts Supreme Judicial Court (SJC) issued a key ruling impacting general contractors facing personal injury claims of subcontractors in the case of *Suquiland v. Skyway Roofing, Inc.*, 498 Mass. 164 (2006).

In October 2021, a roofer was replacing shingles on a building at a New England ski resort with the use of safety lines. The safety line he was using was too short, so he unclipped his harness to move to another line, but he slipped and fell before he could reattach, sustaining significant injuries. The plaintiff worked for a roofing subcontractor that had been hired by the general contractor, Skyway Roofing, Inc., which in turn had the prime contract with the resort's owner. The plaintiff sued Skyway on a theory of negligence and negligent hiring asserting that Skyway's subcontractor (his employer) had a lengthy history of OSHA violations, known to Skyway, including citations for improper fall protection.

Following discovery, Skyway moved for summary judgment and the trial court granted its motion. The appeal was taken directly by the SJC, which affirmed the trial court's decision.

In doing so, the SJC reiterated the long-standing rule of *Corsetti v. Stone Co.* that without retained control there is no duty of care. *Corsetti* established that a general contractor is liable for a subcontractor's worksite injuries only if it "retains the right to control the work" including the right to initiate and maintain safety measures. Here, Skyway's involvement was marginal at best. Though the general contractor delivered materials and made two brief site visits, its subcontractor selected its own means and methods for the work, it supplied fall protection to its own employees, and it was responsible for training its own crews. Additionally, although Skyway's prime contract required it to keep the premises "safe, orderly and workmanlike" the provision created only a general duty and not the specific, retained control over safety practices that *Corsetti* requires. Similarly, neither the building code nor Skyway's signature on the building permit conferred a duty to Skyway. As the SJC stated, a duty must exist before a code violation can support tort liability.

The core holding of *Corsetti* stands firm, but *Suquiland* is also notable for the SJC's holding regarding the negligent entrustment claim. The SJC ruled:

"Where the plaintiff is the subcontractor's own employee, and the general contractor neither retained nor exercised control over the injury-producing condition, and the injury arises from the subcontractor's performance of its own work, Massachusetts law does not recognize an independent negligent hiring claim against the general contractor."

Even though Skyway knew of the subcontractor's prior OSHA violations, foreseeability alone does not create a duty, especially where the exposure to the claimed injury does not flow from the hiring decision. For example, the SJC noted that the subcontractor—not the general contractor—hired the plaintiff, directed his daily work, supplied his equipment, and controlled how it was used. Put simply, negligent hiring claims protect the public, patients, or customers exposed to a bad actor not a subcontractor's own workforce from risks inherent in the job. In affirming dismissal of the claim, the SJC also addressed the implications of workers' compensation and the fact that the plaintiff recovered those benefits through his employer. The SJC stated that to recognize a new tort duty here, "would put the

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common law in tension with the exclusivity of workers' compensation."

Suquilanda reaffirms the holding in *Corsetti* is relative to a genuine right of control over work and safety aspects while also closing the door on the theory of negligent hiring brought by a subcontractor's own employee against the general contractor. As in *Corsetti*, the SJC's decision ultimately came down to case-specific facts; however, *Suquilanda* nonetheless highlights that liability of a general contractor ultimately comes down to the degree to which the general contractor dictates the means and methods through contractual allocation of safety responsibilities and on-site conduct.