

Sacramento Shareholder William Muñoz has been asked by the Air Transport Association, an organization whose members consist of the 9 largest commercial air carriers in the United States, to write an amicus brief on behalf of Petitioner US Airways in the matter of *Seabright Insurance Company v. US Airways*, Case Number S182508, currently pending before the California Supreme Court. Mr. Muñoz is also lead counsel in the matter of *Lewis v. Pepper Construction*, which is also pending before the California Supreme Court with briefing deferred until the Court decides the *Seabright* case.

*Seabright* is a personal injury matter arising out of an accident that occurred at the San Francisco International Airport when Anthony Lujan, an employee of the independent contractor hired by US Airways to inspect and maintain the luggage conveyors belts used by US Airways under a use permit with the City and County of San Francisco, got his arm stuck in the conveyor belt. Seabright Insurance Company, the workers compensation carrier for Mr. Lujan's employer, brought suit against US Airways for reimbursement of workers' compensation benefits paid out on Mr. Lujan's behalf. Mr. Lujan also intervened contending that US Airways was negligent as a result of violating general safety orders pertaining to conveyor belts.

US Airways moved for summary judgment, which the trial court granted. On appeal, The First District, in a published opinion, reversed finding that there was a triable issue of fact regarding US Airways' alleged violation of the general safety orders creating a conflict amongst a number of appellate courts interpreting footnote 3 in the Supreme Court's decision in *Hooker v. Dept. of Transportation* (2002) 27 Cal.4th 198, 212 fn. 3.

Similarly, in *Lewis v. Pepper Construction*, a construction site injury case, the Third District Court of Appeal affirmed the trial court's order granting Mr. Muñoz's client's motion for summary judgment finding that construction manager, Pepper Construction, did not owe a duty of care to Plaintiff, an ironworker who fell from the second level of the West Sacramento IKEA building, under *Privette v. Superior Court* (1993) 5 Cal.4th 689, nor did Pepper affirmatively contribute to Plaintiff's injuries under *Hooker*.

The question presented by the California Supreme Court is: When an employee of an independent contractor sustains an on-the-job injury, can the hirer of the contractor be liable on the theory that the hirer's breach of a non-delegable duty contained in a statute or regulation constituted an "affirmative contribution" to the injury within the meaning of *Hooker v. Dept. of Transp.* (2002) 27 Cal.4th 198, 212, footnote 3?

The resolution of the *Seabright* decision will have far-reaching ramifications on those who hire third parties, particularly in the construction context, regarding the scope of potential liability, the ability to allocate risk, and increased costs in terms of insurance premiums should the Supreme Court affirm the First District's decision in *Seabright*.