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CLIENT ALERT

SJC Decision Provides Further Liability Protection to Volunteer Directors of Charitable Organizations

Volunteer directors on boards of charitable organizations are often concerned about potential personal liability resulting from their board service. Massachusetts law is fairly protective of uncompensated directors of such organizations, generally insulating them from liability for acts or omissions in the course of their duties, absent gross negligence or allegations of intentional harm. G.L. c. 231, §§85K, 85W.¹ In a recent case, Estate of Moulton v. Puopolo, et al. (March 14, 2014), the Massachusetts Supreme Judicial Court (“SJC”) added to those protections by making it much more difficult for employees of charitable organizations to bring claims against individual directors arising out of workplace injuries.

In Moulton, the parents of an employee of North Suffolk Mental Health Association, Inc. (“North Suffolk”) who was killed by a North Suffolk client suffering from mental illness sued all seventeen members of the Board. The SJC ordered the dismissal of all claims brought against the Directors, finding that:

1. The Directors were immune from suit for wrongful death of the North Suffolk employee because of the exclusivity provisions of the workers’ compensation statute; and
2. the Directors owed no fiduciary duty to the deceased employee.

The claims against the Directors alleged that the admissions and operating policies that the Directors had put in place (or had not put in place) failed to ensure the workplace safety of North Suffolk’s employees. The complaint alleged that North Suffolk:

- Failed to properly screen clients;
- Failed to disseminate relevant client history, including a history of violence, to employees;
- Failed to properly train staff; and
- Failed to provide appropriate staffing levels and equipment to ensure the safety of employees.

The Court found that all of the claims related to the collective action of Board members in making policy for North Suffolk, not to the actions of individual Directors. Because the Board’s policymaking function had the capacity to “direct and control” the activities of the agency:

- The Board was acting as the employee’s “employer” for purposes of the workers’ compensation statute;
- The Directors were entitled to the same immunity from suit for wrongful death and similar claims as North Suffolk was as the “employer”; and
- Immunity in this context extended even to allegations of gross negligence, intentional conduct, self-interest or self-dealing.²

The SJC also rejected the Plaintiff’s breach of fiduciary duty claims against Board members, finding that:

- An employer generally owes no fiduciary duty to its employees; and
- Plaintiff had no standing to assert a claim for breach of fiduciary duty against the Board members in this case.

The SJC specifically acknowledged that, absent the protections of Massachusetts law, the risk of potential liability could “discourage well-qualified individuals from serving as directors of charitable corporations.”

Despite its holdings, this decision does not eliminate all risk of potential claims against directors by employees or others. Charities and directors should continue to ensure that the charity itself and its directors, officers and employees are appropriately protected by insurance in case such situations arise. More importantly, all organizations should ensure that appropriate policies and procedures are in place to minimize the risk of violence and harm to clients, employees and members of the public.³

For additional information on this topic and other important information concerning your organization, please contact Attorney Anthony Cichello (acchichello@kb-law.com) or Attorney Anjali Waikar (awaikar@kb-law.com) at Krokidas & Bluestein LLP.

¹ Massachusetts law is also very protective of charitable entities themselves, imposing a \$20,000 cap on liability for most tort claims (\$100,000 in the case of medical malpractice claims against nonprofit organizations providing health care). However, this protection only covers tort claims and does not limit contract-based claims. Nor does it protect the charitable entity if the tort was committed while the charity was engaged in primarily commercial activity, even if such activities were for the purpose of obtaining revenue to be used for charitable purposes.

² In a footnote, the SJC suggested that there was no reason that its analysis “would not apply equally to directors of for-profit corporations.”

³ Note that the Massachusetts Executive Office of Health and Human Services (“EOHHS”) has issued draft regulations relating to workplace violence prevention policies for health and human services providers. These regulations are not yet final. We will provide an update when the final regulations are issued.