

Supreme Court Limits an Employer's Duty to Third Parties

July 16, 2007

In *Brown v. Samuel-Whittar Steel, Inc.*, the Michigan Supreme Court reversed an earlier Michigan Court of Appeals decision which potentially set broad standards for an employer's liability when one of its employees sexually assaults a third party.

As we reported in our May 2006 Client Alert, the Court of Appeals concluded that Samuel-Whittar Steel could be responsible for the injuries to a female security guard who was sexually assaulted by one of its employees. While the employee did not have a criminal record, the Court of Appeals reversed the trial court's decision to dismiss the security guard's negligence claim, finding that because the Company had knowledge that its employee made vulgar, harassing comments to the security guard, it may have been negligent in failing to prevent the assault.

Reversing the Court of Appeals, the Supreme Court concluded that "where an employee has no prior criminal record or history of violent behavior indicating a propensity to rape, an employer is not liable solely on the basis of the employee's lewd comments for a rape perpetrated by that employee if those comments failed to convey an unmistakable, particularized threat of rape." According to the Supreme Court, the Company's knowledge of the tasteless comments was insufficient to put it on notice of "an imminent risk of harm to a specific victim." In other words, the Company could not have reasonably anticipated that the employee would perpetrate the assault. The Court, however, expressly acknowledged that in certain circumstances, an employee's words can create a duty owed by an employer to a third party.

Brown's lesson is clear. In addition to an employer's statutory obligation to take prompt remedial action in response to known sexual harassment towards its employees, an employer that learns that one of its employees threatened to assault a third party has a duty to take reasonable responsive measures. Failure to do so could expose an employer to liability for negligence if the employee subsequently injures the third party.

For further information, contact Miller Canfield's Labor and Employment Group; Adam S. Forman at (313) 496-7654, or Brian Schwartz at (313) 496-7551.