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Missouri Slams the Door On Employees of Independent Contractors

*Matteuzzi v. Columbus Partnership*¹

I. INTRODUCTION

Generally, a landowner is not liable for torts committed by an independent contractor.² However, a landowner may be held responsible by an injured party if the work performed is "inherently dangerous."³ The issue is further complicated if the injured party is an employee of the independent contractor. While Missouri first allowed such a cause of action in 1928,⁴ the issue becomes more complex when considered in light of modern workers' compensation insurance. This Note examines the evolution of the law in this area and addresses the policies that aid in determining whether to allow employees of independent contractors to recover in tort from landowners when workers' compensation has already reimbursed them.

1. 866 S.W.2d 128 (Mo. 1993). *Owens v. Shop 'N Save Warehouse Foods, Inc.*, 866 S.W.2d 132 (Mo. 1993) has similar facts to *Matteuzzi* and was decided the same day. The court used the same principle for the holdings in both cases, and therefore only the *Matteuzzi* case will be discussed in this Note. In *Owens*, the plaintiff was injured as a result of an accident while he was painting a ceiling at the Shop 'N Save store, which was undergoing construction. He worked for Paintsmith, Inc., which was a subcontractor hired to do the paint work at the construction site. Mr. Owens filed and collected a workers' compensation claim against Paintsmith. He then attempted to sue Shop 'N Save using the inherently dangerous activity doctrine. The court held, based on *Matteuzzi*, that "Owens' apparent reliance on the inherently dangerous activity doctrine is without merit." *Owens*, 866 S.W.2d at 133-34.

2. W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 71, at 509 (5th ed. 1984); The term "independent contractor" can generally be defined as "a person who contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking." RESTATEMENT (SECOND) OF AGENCY § 2(3) (1958).

3. KEETON ET AL., *supra* note 2, at 512-15. Compare *Salmon v. Kansas City*, 145 S.W. 16 (Mo. 1912) and *Mallory v. Louisiana Pure Ice & Supply Co.*, 6 S.W.2d 617 (Mo. 1928).

4. *Mallory*, 6 S.W.2d at 626.

II. FACTS AND HOLDING

The Columbus Partnership ("the Partnership") hired R.G. Ross Construction Company ("R.G. Ross"), an independent contractor, to renovate a deteriorating property owned by the Partnership.⁵ R.G. Ross employed the plaintiff, James Matteuzzi, as an apprentice carpenter.⁶ His work entailed replacing the roof rafters and sheathing on a building owned by the Partnership.⁷ This required him to be on the roof without any support, other than a deteriorating, exterior, brick wall.⁸ The wall collapsed while Matteuzzi was working on the roof, and he fell to the ground.⁹

Matteuzzi filed a claim for workers' compensation with R.G. Ross Construction Company.¹⁰ He then filed a separate claim for damages against the Partnership, alleging it negligently failed to protect the independent contractor's employees that were performing inherently dangerous activities.¹¹ The crux of the complaint was that the Partnership "breached a nondelegable duty to assure that adequate precautions were taken to prevent injury to employees of independent contractors engaged in inherently dangerous activity."¹² Additionally, Matteuzzi asserted that because employees of an independent contractor are invitees, the landowner owed them a duty to make the job site safe, regardless of whether inherently dangerous activities were performed.¹³

The court held that since Matteuzzi was an employee of an independent contractor, and since he was covered by worker's compensation insurance, the inherently dangerous activity doctrine no longer applied to his situation.¹⁴ Therefore, Matteuzzi could not recover from the Partnership under his inherently dangerous activity claim.¹⁵ Furthermore, the court held Matteuzzi could not recover as an invitee because the Partnership did not retain

5. *Matteuzzi*, 866 S.W.2d at 129.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.* Matteuzzi fell approximately twenty-three feet. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* at 130.

13. *Id.* at 132.

14. *Id.* at 131. The court cited *Zueck v. Oppenheimer Gateway Properties, Inc.*, 809 S.W.2d 384, 390 (Mo. 1993), as controlling precedent in this situation.

15. *Matteuzzi*, 866 S.W.2d at 131.

"possession and control of the premises."¹⁶ Thus, the duty of care shifted to R.G. Ross, since it now controlled the property.¹⁷

III. LEGAL BACKGROUND

A. Missouri's Approach

At common law, the general rule was that a person employing an independent contractor¹⁸ was not vicariously liable for torts committed by the independent contractor.¹⁹ Several exceptions to this rule evolved over time.²⁰ For example, if the work being performed by the independent contractor was "inherently dangerous," the employer would not escape vicarious liability for damages resulting from the performance of such work.²¹

American courts widely accepted the inherently dangerous activity doctrine, however, the courts have failed to set out a clear definition of what constitutes an "inherently dangerous" activity.²² Missouri courts defined inherently dangerous activities as work which is "intrinsically dangerous, and the danger arises from the doing of the work and requires preventive care to bring about safety."²³ Furthermore, whether an activity is inherently dangerous is "a question of fact."²⁴ Thus, the trier of fact must decide the issue guided by this relatively obscure definition.²⁵

In Missouri, the inherently dangerous doctrine was initially limited to innocent third parties and did not apply to employees of an independent

16. *Id.* at 132.

17. *Id.* at 131.

18. *See generally* RESTATEMENT (SECOND) OF AGENCY §2 note b (1990). *See supra* note 2 for a general definition of independent contractor.

19. KEETON ET AL., *supra* note 2.

20. *See generally* KEETON ET AL., *supra* note 2, at 509-16.

21. KEETON ET AL., *supra* note 2, at 512.

22. KEETON ET AL., *supra* note 2, at 512-13.

23. *Smith v. Inter-County Tel. Co.*, 559 S.W.2d 518, 522 (Mo. 1977) (quoting *Carson v. Blodgett Constr. Co.*, 174 S.W. 447, 448 (Mo. Ct. App. 1915)).

24. *See Nance v. Leritz*, 785 S.W.2d 790, 793 (Mo. Ct. App. 1990). *But cf. Barbera v. Brod Dugan Co.*, 770 S.W.2d 318, 322 (Mo. Ct. App. 1989), where the Eastern District Court of Appeals stated that whether the activity was inherently dangerous was "a mixed question of law and fact which may be made by the trial judge as a matter of law in certain cases."

25. In *Matteuzzi*, whether the activity was inherently dangerous was not at issue on appeal.

contractor.²⁶ Then, in 1928, the Missouri Supreme Court extended the doctrine to encompass the employees of independent contractors.²⁷ In *Mallory v. Louisiana Pure Ice and Supply Co.*, the court held that as long as the activity the employee was engaged at the time of injury related to the reason why the work itself was inherently dangerous, then the employee could hold the landowner liable under the inherently dangerous activity doctrine.²⁸ The court reasoned an employee should not be put in a worse position than a member of the general public.²⁹ Therefore, the doctrine protected both the independent contractor's employees, and the general public.³⁰ However, at least since 1977 only employees of independent contractors have utilized the doctrine.³¹

In 1977, in *Smith v. Inter-County Telephone Co.*, the Missouri Supreme Court decided that in order for an employee of an independent contractor to recover under the inherently dangerous activity doctrine, the employee had to demonstrate that the landowner was somehow negligent.³² More specifically, the court held that in order for an employee to take advantage of the doctrine, he or she must show that "the one contracting with the independent contractor negligently failed to insure that adequate precautions were taken to avoid damage by reason of the inherently dangerous activity."³³

However, in 1990, the Missouri Supreme Court overruled *Smith* in *Ballinger v. Gascoisage Electric Cooperative*.³⁴ The court stated that the "Restatement correctly reflects Missouri law and . . . there was no purpose in

26. *Salmon v. Kansas City*, 145 S.W. 16, 23 (Mo. 1912) ("[W]hatever duty the [landowner] owes [he] owes it to the public and not to the servants of the contractor.").

27. *Mallory v. Louisiana Pure Ice & Supply Co.*, 6 S.W.2d 617, 626 (Mo. 1928).

28. *Id.* The court distinguished this case from *Salmon* by saying that the work performed by the employee in *Salmon* was collateral to what made the work inherently dangerous in the first place.

29. *Id.* at 626-27.

30. *See id.*

31. *See generally* Nancy L. Ripperger, Note, *The Inherently Dangerous Doctrine in Missouri: A Socially Just Doctrine?*, 56 MO. L. REV. 479, 484 n.32 (1991). Similarly, this author could find no cases in Missouri after 1977 in which the party using the inherently dangerous activity exception was simply an unconnected third party.

32. *Smith*, 559 S.W.2d at 523.

33. *Id.* The plaintiff also had to show that (1) the performance involved some "inherently dangerous activity;" (2) "the activity which caused the damage was reasonably necessary to the performance of the contract and was inherently dangerous;" (3) the landowner was negligent; and (4) the damage was a "direct result of such negligence." *Id.*

34. 788 S.W.2d 506 (Mo. 1990).

Smith to change the governing law.¹³⁵ Therefore, the court held a plaintiff need not show negligence under this doctrine.³⁶ The liability that attaches is "purely vicarious."³⁷

In 1991, the court reexamined the inherently dangerous activity doctrine with respect to employees of independent contractors covered by workers' compensation insurance.³⁸ In the landmark decision of *Zueck v. Oppenheimer Gateway Properties, Inc.*, the court held that employees of independent contractors covered under worker's compensation could no longer use the inherently dangerous activity doctrine to recover from the landowner.³⁹ The "obvious purpose of the doctrine is to prevent the landowner . . . from avoiding liability and defeating the recovery of an injured, innocent third party, by hiring a contractor who is not fiscally responsible to do the dangerous work."⁴⁰ Since Missouri law (at this point) required no showing of negligence, the landowner's liability was purely vicarious.⁴¹ If the independent contractor's employees were allowed to sue the landowner under the inherently dangerous activity doctrine, then the landowner essentially becomes an "insurer of the employee's injury."⁴² With the evolution of the modern compulsory workers' compensation insurance system, the employee was now adequately insured and the need for the inherently dangerous activity doctrine as applied to employees of independent contractors had ceased to exist.⁴³

The inherently dangerous activity doctrine appeared to have come full circle. Its use was once again exclusively restricted to unconnected third parties.⁴⁴ However, in a concurring opinion Chief Justice Blackmar hinted at the possibility that the *Smith* case may still be viable in a situation where the "evidence supports a finding of a duty from the owner to others and a breach of that duty through the owner's own negligence."⁴⁵

In 1992, Chief Justice Blackmar's theory was tested before the Eastern District Court of Appeals in *Halmick v. SBC Corporate Services, Inc.*⁴⁶ The

35. *Id.* at 511.

36. *Id.*

37. *Id.*

38. *Zueck v. Oppenheimer Gateway Properties, Inc.*, 809 S.W.2d 384 (Mo. 1991).

39. *Id.* at 384.

40. *Id.* at 386.

41. *See Ballinger*, 788 S.W.2d at 510; *see also* RESTATEMENT (SECOND) OF TORTS §§ 416, 427 (1990).

42. *Zueck*, 809 S.W.2d at 387.

43. *Id.*

44. *See id.*

45. *Id.* at 391 (Blackmar, C.J., concurring).

46. 832 S.W.2d 925 (Mo. Ct. App. 1992).

plaintiff attempted to combine two doctrines into a hybrid theory.⁴⁷ The petition alleged the landowner "was negligent in failing 'to insure that adequate precautions were taken to avoid injury . . . by reason of the inherently dangerous activity,'" and, additionally the landowner was overseeing the performance by the independent contractors.⁴⁸ The plaintiff argued that because the activity was inherently dangerous and the landowner had agents present while the work was being performed, the landowner had a duty to insure that proper safety precautions were taken.⁴⁹ The court held this argument invalid.⁵⁰ The court stated that *Zueck* had eliminated "the inherently dangerous/non-inherently dangerous activity dichotomy" in Missouri.⁵¹ The court did not completely foreclose the possibility that *Smith* may provide a viable theory for the use of the inherently dangerous activity doctrine, but stated that, on these facts, the plaintiff did not demonstrate that the landowner had sufficient control of the activities.⁵²

The Missouri Supreme Court finally slammed the door on the use of the inherently dangerous activity doctrine by employees of independent contractors in *Matteuzzi*.⁵³ The court clearly stated that as an employee of an independent contractor, *Matteuzzi* had no cause of action under the inherently dangerous activity doctrine.⁵⁴ In addition, the court held that before a duty would arise mandating that a landowner protect the employee as an invitee, the landowner's control of the premises must be found to be "substantial."⁵⁵

47. *Id.* at 926-27.

48. *Id.* at 927.

49. *See Halmick*, 832 S.W.2d at 927. The plaintiff amended the complaint three times, therefore it is not entirely clear what the exact theory of liability was. The court appears to oversimplify the theory by stating that the contention was that "a duty arose on the part of SBC to insure the work was performed safely." *Id.* However, from the complaint it appears to the author that the inherently dangerous activity doctrine was meant to play a more significant role than what the court allowed.

50. *Id.* at 928.

51. *Id.*

52. *Id.* at 929 (the landowner's "involvement in overseeing [the activity] must be substantial" for a duty to arise.).

53. *Matteuzzi*, 866 S.W.2d at 132. *See infra* notes 65-90 and accompanying text.

54. *Matteuzzi*, 866 S.W.2d at 132. *See infra* notes 80-85 and accompanying text. The court also noted that *Smith* is overruled to the extent that it "authorize[s] a cause of action in favor of employees of independent contractors covered by workers' compensation." *Matteuzzi*, 866 S.W.2d at 132.

55. *Matteuzzi*, 866 S.W.2d at 132 (quoting *Halmick*, 832 S.W.2d at 929).

B. *The Approach of Other Jurisdictions*

The trend among jurisdictions outside of Missouri addressing the use of the inherently dangerous activity doctrine by employees of an independent contractor, in light of modern workers' compensation statutes, has been to limit the use of the doctrine to unconnected third parties.⁵⁶ One frequently cited rationale behind the restriction is that because the cost of workers' compensation insurance will inevitably be passed on to the landowner in the contract price, in reality, the landowner bears the burden of paying for workers' compensation insurance.⁵⁷ In return, the landowner should receive the benefit of not being subject to a lawsuit.⁵⁸ Another rationale offered is if the landowner were subject to this double liability, he would be encouraged to use his own (possibly unqualified) employees rather than a more qualified independent contractor.⁵⁹ Furthermore, some courts have reasoned that to allow an employee to maintain a cause of action against the landowner, in addition to his or her recovery under a workers' compensation statute, would result in an unjust "windfall" for the employee.⁶⁰ Therefore, the employee should be limited to workers' compensation as the sole method of recovery.⁶¹

A very limited number of jurisdictions have allowed the employee to maintain a cause of action under the inherently dangerous doctrine even after

56. Edward J. Henderson, Note, *Liability to Employees of Independent Contractors Engaged in Inherently Dangerous Work: A Workable Workers' Compensation Proposal*, 48 *FORDHAM L. REV.* 1165, 1178-81 (1980).

57. See *Sloan v. Atlantic Richfield Co.*, 552 P.2d 157, 159-60 (Alaska 1976); *Welker v. Kennecott Copper Co.*, 403 P.2d 330, 338 (Ariz. Ct. App. 1965); *Privette v. Superior Court (Contreras)*, 854 P.2d 721, 728 (Cal. 1993); *Ray v. Schneider*, 548 A.2d 461, 466 (Conn. Ct. App. 1988); *Johns v. New York Blower Co.*, 442 N.E.2d 382, 387 (Ind. Ct. App. 1982); *Dillard v. Strecker*, 861 P.2d 1372, 1376 (Kan. Ct. App. 1993); *King v. Shelby Rural Elec. Coop. Corp.*, 502 S.W.2d 659, 662 (Ky. Ct. App. 1973), *cert. denied* 417 U.S. 932 (1974); *Rowley v. Mayor of Baltimore*, 505 A.2d 494, 501 (Md. 1986); *Conover v. Northern States Power Co.*, 313 N.W.2d 397, 405 (Minn. 1981); *Matteuzzi v. Columbus Partnership*, 866 S.W.2d 128, 131 (Mo. 1993); *Woodson v. Rowland*, 373 S.E.2d 674, 677 (N.C. Ct. App. 1988); *Curless v. Lathrop Co.*, 583 N.E.2d 1367, 1378 (Ohio Ct. App. 1989); *Tauscher v. Puget Sound Power & Light Co.*, 635 P.2d 426, 430 (Wash. 1981); *Jones v. Chevron U.S.A., Inc.*, 718 P.2d 890, 899 (Wyo. 1986).

58. See cases cited *supra* note 57.

59. See, e.g., *King*, 502 S.W.2d at 663; *Jones*, 718 P.2d. at 899; see also Henderson, *supra* note 56, at 1181 n.77.

60. See, e.g., *Vagle v. Picklands Mather & Co.*, 611 F.2d 1212, 1218 (8th Cir. 1979) (applying Minnesota law), *cert. denied* 444 U.S. 1033 (1980); *King*, 502 S.W.2d at 663.

61. *Vagle*, 611 F.2d at 1218; *King*, 502 S.W.2d at 663.

recovering workers' compensation from their immediate employer.⁶² The Hawaii Supreme Court allowed such a recovery on the theory that landowners did not fall within the definition of "employer," and therefore the exclusivity of workers' compensation did not apply to landowners.⁶³ Thus, how a jurisdiction resolves the issue may depend heavily on the particular workers' compensation statute in that jurisdiction.⁶⁴ Most of the jurisdictions considering the issue have chosen not to construe the term "employer" so narrowly as to allow an employee to circumvent the purpose of the workers' compensation laws.⁶⁵

IV. INSTANT DECISION

After reciting the relevant facts,⁶⁶ a unanimous Missouri Supreme Court emphasized the difference between section 413 and section 416 of the Restatement (Second) of Torts (1965).⁶⁷ The court noted that section 413 imposes liability only if the landowner (a) "fails to provide in the contract that the contractor shall take such precautions, or (b) fails to exercise reasonable care to provide in some other manner for the taking of such precautions."⁶⁸ On the other hand, section 416 imposes liability on the landowner if precautions were not taken, even if special precautions were provided for in the contract.⁶⁹ The court stated that the only difference between the two sections was "the direct imposition of liability on a landowner who fails to provide in the contract or otherwise for the taking of any necessary precautions."⁷⁰

62. See, e.g., *Makaneole v. Gampon*, 777 P.2d 1183 (Haw. 1989); *Elliott v. Public Serv. Co.*, 517 A.2d 1185 (N.H. 1986). The decision may be affected by the individual states workers' compensation statute and the definition of "employer" within that statute. Also, not all jurisdictions have decided the issue with regard to workers' compensation.

63. *Makaneole*, 777 P.2d at 1187.

64. Specifically, the issue turns on the drafting of the workers' compensation statute of the jurisdiction, and whether the legislature has chosen to define "employer" in the statute.

65. See cases cited *supra* note 57.

66. *Matteuzzi*, 866 S.W.2d at 129-30. See *supra* notes 6-18 and accompanying text.

67. *Matteuzzi*, 866 S.W.2d at 130-31.

68. *Id.* (citing RESTATEMENT (SECOND) OF TORTS § 413 (1965)).

69. *Id.* (citing RESTATEMENT (SECOND) OF TORTS § 416 (1965)).

70. *Id.* at 131.

The court then analyzed Missouri cases relevant to the issue.⁷¹ The distinguished *Ballinger* from *Smith*,⁷² stating that while *Ballinger* stated a cause of action based purely on vicarious liability, it did not preclude a cause of action involving landowner negligence like that in *Smith*.⁷³ The court then stated that *Zueck* held "[w]here workers' compensation law provides for liability of negligent third parties, as Missouri's does, there exists no valid reason to hold landowners vicariously liable to employees of independent contractors engaged in inherently dangerous activities."⁷⁴ After *Zueck*, the doctrine was still available to "any third party not covered by workers' compensation."⁷⁵

Matteuzzi's pleadings, however, did not allege a cause of action based on purely vicarious liability, as the *Zueck* case required.⁷⁶ Matteuzzi claimed that the landowner was liable based on section 413 of the Restatement.⁷⁷ Matteuzzi claimed the Partnership was liable because they were "negligent in failing to take reasonable precautions to insure that the premises were safe for third parties, including the contractor's employees."⁷⁸ The court stated the "Court of Appeals tacitly recognized" that *Zueck* had effectively abolished actions brought under both section 413 and section 416.⁷⁹ The Missouri Supreme Court noted that, because the same policy considerations apply to both sections, the court of appeals was correct in barring an action based on landowner negligence like that in *Smith*.⁸⁰

The court relied on two principal reasons for barring employee recovery under the inherently dangerous activity doctrine.⁸¹ First, the cost of workers' compensation coverage is generally passed on to the landowner, as it is reflected in the contract price the independent contract charges.⁸² Therefore, it would be unfair to the landowner to allow employees to recover from the

71. *Id.* at 131-32.

72. *See Ballinger v. Gasconade Elec. Coop.*, 788 S.W.2d 506 (Mo. 1990); *Smith v. Inter-County Tel. Co.*, 559 S.W.2d 518, 523 (Mo. 1977). *See supra* notes 33, 35 and accompanying text.

73. *Matteuzzi*, 866 S.W.2d at 131.

74. *Id.* (quoting *Zueck v. Oppenheimer Gateway Properties, Inc.*, 809 S.W.2d 384, 390 (Mo. 1991)).

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* (citing *Halmick v. SBC Corporate Serv., Inc.*, 832 S.W.2d 925, 928 (Mo. Ct. App. 1992)).

80. *Id.* at 131-32.

81. *Id.*

82. *Id.* at 131.

landowner under the doctrine, because such a recovery effectively subjects the landowner to "double liability."⁸³ Second, the court reasoned if the landowner were subject to liability despite having paid for workers' compensation coverage, landowners would be encouraged to use their own employees to perform the inherently dangerous work, rather than hiring an expert in that particular field.⁸⁴ In doing so, a landowner would limit his liability, but would increase the risk of injury to others.⁸⁵ Therefore, the court held that "Matteuzzi, as the employee of the landowner's independent contractor, has no cause of action under either variation of the inherently dangerous activity doctrine."⁸⁶

Furthermore, the court noted that the landowner may owe a duty to make the premises safe to the employee as an "invitee."⁸⁷ Whether that duty arises, however, depends on the amount of control the landowner has over the work.⁸⁸ According to the court, the control must be "substantial" before any such duty will arise.⁸⁹ If a landowner "relinquishes possession and control . . . to the independent contractor," *i.e.*, does not retain "substantial" control, the duty to make the premises safe for invitees passes to the independent contractor.⁹⁰ In the present case, Matteuzzi's petition did not allege sufficient activities on the part of the landowner rising to the level of "substantial" control.⁹¹ Therefore, the court affirmed dismissal of the petition.⁹²

V. COMMENT

One of the overarching goals of tort law is to make the injured party whole again—to restore the status quo.⁹³ This reasoning justifies holding a

83. *Id.* at 131-32. The "double liability" the court spoke of was "workers' compensation coverage and liability under the inherently dangerous activity doctrine." *Id.*

84. *Id.* at 132.

85. *Id.* The court stated that this was "counter-productive[.]"

86. *Id.*

87. *Id.*

88. *Id.*; see also *Halmick*, 832 S.W.2d at 929.

89. *Matterzi*, 866 S.W.2d at 132 (quoting *Halmick*, 832 S.W.2d at 929).

90. *Id.* (citing *Halmick*, 832 S.W.2d at 927; RESTATEMENT (SECOND) OF TORTS § 422 and cmt. c, at 405 (1965)).

91. *Id.* "Matteuzzi's sole allegation of 'control' [was] that '[t]he subject property was owned and/or controlled by [the Partnership]." The court stated that this was not enough to show "'substantial' control." *Id.*

92. *Id.*

93. See Ripperger, *supra* note 31, at 486.

landowner who commissions an inherently dangerous activity vicariously liable for injuries to innocent third parties not associated with the contracting relationship.⁹⁴ However, when an employee of an independent contractor is guaranteed recovery under workers' compensation, one must question whether allowing that worker a cause of action against the landowner is consistent with the overarching goal of tort law.

One of the main reasons for holding a landowner liable to a third party under this doctrine is to assure that an injured party has an avenue for recovery, even if the independent contractor who actually committed the tort is insolvent.⁹⁵ However, with the advent of compulsory workers' compensation laws, when an employee of an independent contractor is injured, the employee is assured compensation from the common fund into which the employer pays. Since the purpose of making the injured employee whole again is accomplished through workers' compensation, the court in *Matteuzzi* is justified in limiting the doctrine to unconnected third parties.

Additionally, the landowner "pays either indirectly or directly 'for the compensation coverage when he contracts with the independent contractor.'⁹⁶ Since the landowner indirectly bears the burden of paying into the workers' compensation fund, he or she should also receive the benefit the fund offers other employers. The benefit of workers' compensation to the employer is that by paying premiums, the employer is relieved of all other liability.⁹⁷ To hold an employer (the landowner) who pays for the coverage liable for an employee's injury that arises out of the course of employment would be contrary to the purpose of workers' compensation. Such an approach would essentially "punish[] landowners who seek expert assistance" in performing inherently dangerous activities.⁹⁸

Furthermore, to hold a landowner liable discourages the landowner from hiring experts to do the inherently dangerous work simply because they were independent contractors.⁹⁹ Discouraging landowners from hiring experts to perform dangerous work would not be economically efficient to society, as

94. Ripperger, *supra* note 31, at 486-87.

95. See, e.g., Ripperger, *supra* note 31, at 486-87.

96. *Matteuzzi*, 866 S.W.2d at 131 (quoting *Zueck*, 809 S.W.2d at 389).

97. MO. REV. STAT. § 287.120(1) (Supp. 1994) states in part:

Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident arising out of and in the course of his employment, and shall be released from all other liability thereof whatsoever.

98. *Zueck*, 809 S.W.2d at 388.

99. *Matteuzzi*, 866 S.W.2d at 132.

more injuries would likely result from laymen performing such dangerous work.

In addition, if employees of independent contractors were allowed to sue in tort, the landowner would be subject to "double liability."¹⁰⁰ Courts must take into account the possibility that an employee, if given the opportunity to sue the landowner, may be given an "unwarranted windfall."¹⁰¹ Workers' compensation laws are a "product of a tradeoff;" the employer "assumes automatic liability," and "the employee forfeits his right to a potentially lucrative common law judgment in return for assured compensation."¹⁰² If the employee is allowed to sue the landowner, who is at least his constructive employer, if not his direct employer, then the employee is not upholding his or her end of the workers' compensation bargain.

It may be argued that policy considerations in favor of the landowner are not as strong in a case like *Matteuzzi*, where the plaintiff alleges that the landowner was negligent in not providing that precautions be taken to protect the worker from the inherently dangerous work.¹⁰³ In order to avoid liability in such a case, a landowner need only provide in the employment contract that the independent contractor must take reasonable precautions to protect from injury.¹⁰⁴ Arguably, this requirement decreases on-the-job injuries, and therefore ultimately reduces the burden placed on the workers' compensation fund. However, under typical workers' compensation laws, whether the employer was negligent or not is irrelevant.¹⁰⁵ The employee recovers from the fund regardless of the employer's actions.¹⁰⁶ Therefore, it should not matter if the landowner was negligent in not providing for precautions. Since the landowner is essentially paying for the coverage, the landowner should be treated the same as any regular employer.

A final consideration is whether landowners were the intended beneficiaries of the workers' compensation laws.¹⁰⁷ The Hawaii Supreme Court concluded that the definition of "employer," which originally included a landowner who hired an independent contractor but was later amended to exclude the landowner, excluded landowners from the scope of the Hawaii workers' compensation laws.¹⁰⁸ Therefore, the "exclusivity clause" only

100. *See id.* at 131-32.

101. *See, e.g., Vagle v. Picklands Mather & Co.*, 611 F.2d 1212, 1218 (8th Cir. 1979), *cert. denied*, 444 U.S. 1033 (1980).

102. *Zueck*, 809 S.W.2d at 388.

103. *Matteuzzi*, 866 S.W.2d at 130.

104. *See id.*

105. *See* MO. REV. STAT. § 287.120(1) (Supp. 1992), *supra* note 97.

106. *Id.*

107. *Makaneole v. Gampon*, 777 P.2d 1183, 1185-87 (Haw. 1989).

108. *Id.*

applied to the "direct employer," and the employee was free to maintain a cause of action against the landowner who commissioned the inherently dangerous activity.¹⁰⁹

The majority of the states considering this issue have decided not to give the term "employer" such a narrow definition, deciding instead that competing policy considerations warrant giving the term a broad definition.¹¹⁰ Missouri cases indicate the term "employer" should be given a liberal definition to effectively carry out the purposes of the workers' compensation laws.¹¹¹ *Matteuzzi* did not address the issue of whether a landowner is an "employer" for purposes of the Workers' Compensation Act,¹¹² but it follows that a party who paid into the fund should be an intended beneficiary of the law.¹¹³

VI. CONCLUSION

In light of the policies and purposes behind workers' compensation laws, the *Matteuzzi* decision offers the correct approach. It recognizes that workers' compensation laws adequately allocate the risk of injury. Courts should not be permitted to circumvent workers' compensation statutes by allowing an employee of an independent contractor to sue a landowner who is effectively his or her employer.

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109. *Id.*

110. *See, e.g., supra* note 60.

111. *Specie v. Howerton Elec. Co.*, 344 S.W.2d 314, 315 (Mo. Ct. App. 1961).

112. *See Matteuzzi v. Columbus Partnership*, 866 S.W.2d 128 (Mo. 1993).

113. The intended beneficiaries of the workers' compensation act may be set out in detail in a particular act. *See, e.g., supra* text accompanying notes 108 and 109 for such an example.

