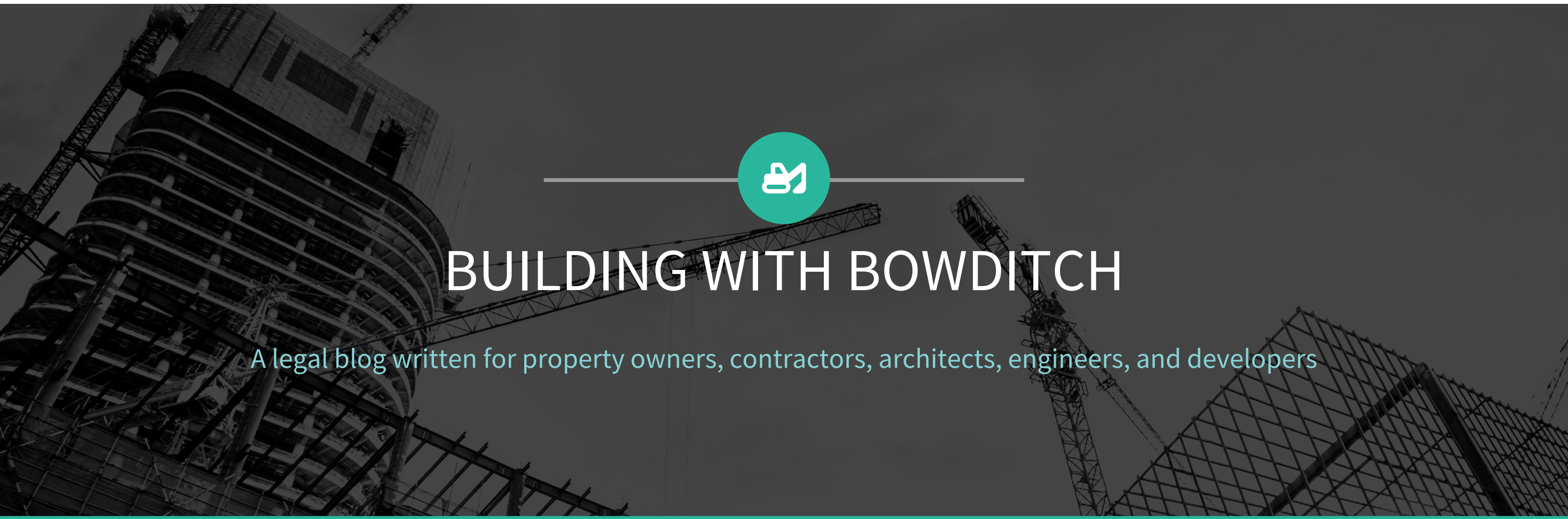

SJC Decision Highlights Contractual Risk Allocation on Massachusetts Construction Projects

BY LEAH A. ROCHWARG • AUGUST 25, 2026

The Massachusetts Supreme Judicial Court's August 17, 2026, decision in *Suquilanda v. Skyway Roofing, Inc.*, SJC-13878, arose from a serious construction accident, but it also offers a useful reminder for anyone drafting or administering construction contracts in Massachusetts. The decision is relevant to owners, contractors, construction managers, insurers, design professionals, and others involved in structuring construction projects. (Note: At the time of publication, the Court's decision is a slip opinion and is subject to formal revision before publication in the Massachusetts Official Reports.)

Skyway Roofing contracted with Jiminy Peak Mountain Resort to perform roofing work and subcontracted the work to MBT Construction Corp. An MBT employee suffered catastrophic injuries after falling from the roof and sued Skyway for negligence and negligent hiring.

The SJC affirmed summary judgment for Skyway. Under Massachusetts law, a general contractor may be liable for injuries arising from a subcontractor's work where it retains sufficient control over that work. Here, however, MBT controlled its means and methods, supplied the fall-protection equipment, supervised its employees, and determined how the roofing work would be performed. Skyway's general project oversight was not enough to establish control over the work or safety practices that caused the injury.

The Court also rejected the negligent hiring claim. Although there was evidence that Skyway knew its roofing subcontractor had previously received OSHA citations involving fall protection, the Court declined to recognize an independent negligent hiring duty where the injured worker was the subcontractor's own employee and Skyway had not retained or exercised control over the injury-producing work.

WHY THIS MATTERS FOR CONSTRUCTION CONTRACTS

Suquilanda illustrates why risk allocation provisions should not be treated as boilerplate. Contract terms addressing means and methods, safety, supervision, inspection and stop-work rights, indemnification, and insurance should be reviewed with the specific project in mind. The parties' conduct matters too. A careful allocation of responsibility can become less clear if the project is administered differently in the field.

Standard industry contract forms can provide a useful starting point, but they are not a substitute for project-specific review. Every project presents its own delivery, scope, schedule, insurance, design, procurement, and risk considerations. Massachusetts law also may materially affect indemnification, payment, retainage, bonding, public procurement, dispute resolution, and other contract terms.

The construction agreement should not be reviewed in isolation. The design contract and, where applicable, the agreement with an owner's project manager ("OPM") or other owner's representative, should be coordinated with the construction documents so the respective roles of the owner, designer, OPM, construction manager, prime contractor, and other participants are clearly defined.

ADDRESS RISK ALLOCATION EARLY

Experienced construction counsel should be involved while there is still an opportunity to shape the project agreements. If an RFP will be issued, that may mean preparing the proposed construction contract in advance and including it with the procurement documents so bidders can evaluate and price the contractual requirements before submitting proposals. If there is no RFP, the same principle applies: address risk allocation before the project structure and material terms have been agreed to.

Contractual risk allocation should also be coordinated with the project's insurance program. Indemnity and insurance requirements are closely related, but they are not interchangeable. The parties should understand whether the required coverage is available, whether the limits and types of coverage are appropriate for the project, and whether the insurance program supports the allocation of risk reflected in the contracts.

Suquilanda provides a timely reason to evaluate contract forms, insurance requirements, and contracting practices. The best time to identify gaps or inconsistencies is before contracts are signed and before work begins.

If you are planning a project or would like to discuss how *Suquilanda* may affect your contracts or contracting practices, please contact the author or your Bowditch attorney.