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**ILLUSTRATION 18-3. Sample Case Brief, *King v. Miller*****KING v. MILLER**

1000 E.R. 108 (Karen Ct. App. 2016)

**PROCEDURAL HISTORY**

The case was on appeal from the District Court's grant of summary judgment for the defendant Miller.

**ISSUE**

Is King, a worker subject to only minimal company control and who was paid commissions rather than a salary and benefits, an employee protected by Title VII or an independent contractor who is outside the protection of the federal law?

**HOLDING**

King, a worker subject to only minimal company control and who was paid commissions rather than a salary and benefits, was an independent contractor rather than an employee protected by Title VII.

**FACTS**

King first worked for Miller as an employee agent. During that time, she received a salary and the company withheld income tax and social security payments. King later was promoted to independent contract agent.

As an independent contract agent, King earned a commission and bonuses but did not receive a salary. She signed an agreement that stated that she was an independent contractor. As a contract agent, she did not receive paid holidays, sick days, or vacation days, and she paid for her own health, life, and disability insurance. King supplied her own personalized stationery, business cards, and pens. She found her own customers, decided which products to sell, and set her own hours.

For its contract agents, Miller supplied office space, furniture, file cabinets, forms, shared secretarial services, stamps, computers, and stationery. Miller also paid for required insurance seminars. Miller

**ILLUSTRATION 18-3. Continued**

required that contract agents, such as King, attend weekly meetings, work in the office three and one-half days per week and every third Saturday, check their mail and retrieve messages daily, and sell only Miller insurance. Miller also restricted King's sales area. Miller did not regularly review King's work.

**REASONING**

In order to determine whether an individual is an employee or an independent contractor, the employment relationship between the parties needs to be evaluated based upon the economic realities and circumstances of the relationship. The court considered the control exercised by the "employer" over the worker; the method of payment; who paid for the individual's benefits, such as life and health insurance; and who paid for the operation. In this case, the court found that King was an independent contractor because she was paid on commission, she paid for her own benefits, she supplied her own supplies, and she controlled her work. The court found that she set her own hours, selected the product she sold, and generated her own clients. Based upon these facts, the appellate court found that King should be considered an independent contractor rather than an employee.

**DICTA**

The 11-part test set by the *Spirides* court should be applied to determine whether an individual is an employee or an independent contractor.

**DISPOSITION**

The Court of Appeals affirmed the district court's judgment in granting summary judgment for the defendant.

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