



TEXAS PUBLIC POLICY FOUNDATION
LEGISLATORS' GUIDE TO THE ISSUES

Workers' Compensation and the "Entergy" Decision

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THE ISSUE

Premises owners who act as general contractors are given the same rights and liabilities as general contractors under the Texas Workers' Compensation Act. In *Entergy Gulf States, Inc. v. Summers*, the Texas Supreme Court noted that Texas law, legislative history, and public policy have not wavered on this issue since the statute was enacted in 1917.

The *Entergy* decision prompted the introduction of legislation in the 81st session which would have eliminated tort immunity for jobsite owners who serve as their own general contractor. Specifically, the bill narrowly defined "general contractor" to include only one "who undertakes to procure the performance of work or a service for the benefit of another, either separately or through the use of subcontractors." The bill would have drawn an arbitrary distinction between premises owners who buy workers compensation insurance for their workers, and general contractors who buy workers compensation insurance for their workers. The distinction would have removed the protections from business owners and lawsuits by injured employees even when the employer is providing workers' compensation insurance.

In addition to creating legal uncertainty and creating separate standards for premises owners and general contractors, premise owners would be forced to buy multiple insurance policies to indemnify themselves. The effect of this would be to add to the cost of construction projects at a time when the construction industry is in a downturn. This leaves fewer resources for benefits to injured employees and increases the cost of construction projects, as well as increases delays or cancellation of projects.

THE FACTS

- ★ The workers compensation statute, enacted in 1917, extended to any purchaser of workers' compensation insurance and made no distinction between general contractors and premises owners.
- ★ There have been no revisions over the 93 year history of the Workers Compensation Act indicating a legislative intent to create an exception for owner-subscribers. Additionally, the 1983 restructuring of the provision does not create a distinction between different kinds of entities up or down the contracting chain.
- ★ The Workers Compensation Act specifically outlines a process by which a general contractor qualifies for immunity from common-law tort claims brought by the employees of its subcontractors. If there is an agreement whereby the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor, then the general contractor becomes a statutory employer and is entitled to immunity from actions brought by the subcontractor's employees.
- ★ The Legislature defines "general contractor" as: [A] person who undertakes to procure the performance of work or a service, either separately or through the use of subcontractors. The term includes a "principal contractor," "original contractor," "prime contractor," or other analogous term. The term does not include a motor carrier that provides a transportation service through the use of an owner-operator.

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- ★ The Texas Supreme Court has stated that a general contractor is a person who takes on the task of obtaining the performance of work and that the definition does not exclude premises owners.
- ★ As recently as 1989, the Legislature declined to include language in the Act that would limit the definition of general contractors based on ownership status.
- ★ In 2008, only 28 percent of construction industry employers in Texas were non-subscribers in the system compared to 39 percent non-subscription in the health care industry, and 46 percent in the entertainment and tourism industry.

RECOMMENDATION

- ★ Continue to provide the same tort liability immunity for premises owners who provide workers' compensation insurance coverage to their employees that general contractors and subcontractors receive.

RESOURCES

"Workers' Compensation: Owner, Acting as Its Own General Contractor, May Invoke the Statutory Employer Defense When Sued by an Injured Subcontractor's Employee" by Marc M. Schneier, *Construction Litigation Reporter* (June 2009) 30 No. 6 CONLITR 16, <http://www.buildinglaw.org/publications.html>.

Entergy Gulf States v. Summers, 282 S.W. 3d 433, 436-37 (Tex. 2009); "Texas SC to rehear Entergy workers' comp case" by Steve Korris, *Southeast Texas Record* (16 Apr. 2008) <http://www.setexasrecord.com/news/210965-texas-sc-to-rehear-entergy-workers-comp-case>.

HB 1657, 81st Legislative Session, <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=HB1657>.

Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers Compensation System, Texas Department of Insurance (Dec. 2008) <http://www.tdi.state.tx.us/reports/wcreg/documents/settingthestandard201.pdf>.

Texas Workers Compensation Act, Tex. Lab Code Sec. 406.121, <http://www.statutes.legis.state.tx.us/Docs/LA/htm/LA.406.htm#406.121>.

Tex. Govt. Code, Sec. 311.011, <http://www.statutes.legis.state.tx.us/Docs/GV/htm/.GV.311.htm#311.011>. ★

