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Entergy Gulf States, Inc. v. Summers, 2007 WL 2458027 (Tex. August 31, 2007)

Premises Owner Can Also be General Contractor Entitled to Exclusive Remedy Defense

John Summers was injured on the job while working at Entergy's Sabine Station plant as an employee of subcontractor International Maintenance Corp. (IMC). Entergy agreed to provide workers' compensation benefits to IMC's employees at the Sabine plant and obtained an insurance policy for that purpose. After his injury, Summers collected workers' compensation benefits from the Entergy policy and then sued Entergy, as the premises owner, for negligence. Entergy moved for summary judgment on the exclusive remedy defense, arguing that it was a general contractor and thus a deemed employer under the Act. The trial court granted Entergy's motion, but the court of appeals reversed. The Texas Supreme Court reversed the decision of the court of appeals, holding that a premises owner can also be a "general contractor" under the Labor Code and thus qualify for the exclusive-remedy defense.

The Supreme Court noted that pursuant to the Labor Code a general contractor is defined as a "person who undertakes to procure the performance of work or a service, either separately or through the use of subcontractors." A "general contractor" may enter into a written agreement to provide workers' compensation to a subcontractor and its employees and such an agreement makes the general contractor the employer for the purposes of the Workers' Compensation Act. The court rejected the court of appeals reliance on the previous decision of *Williams v. Brown & Root, Inc.* 947 S.W.2d 673 (Tex. App. – Texarkana 1997, no writ), which held that a premises owner was "arguably" not protected by the exclusive-remedy provision. The Supreme Court pointed out that the court of appeals in *Williams* had not adhered to the Labor Code's specific definition of "general contractor," which does not prohibit a premises owner from also being a general contractor.

Summers maintained that the pre-1993 Labor Code definitions did preclude this dual role. Prior to 1993 a subcontractor was defined as "a person who contracts with a general contractor to perform all or part of the work or services that the general contractor has **contracted with another party** to perform" but after 1993 a subcontractor was defined as "a person who contracts with a general contractor to perform all or part of the work or services that the general contractor has **undertaken** to perform" The 1993 change was a re-codification of the statute which the Legislature stated was meant to revise the law "without substantive change." Thus, Summers argued that the dual role remained precluded by the Labor Code. However, the supreme court pointed out that there was a substantive change in the definition and "even if the earlier statutory definition of subcontractor suggested that the prime contractor and premises owner must be separate entities, and the revised Code states that no substantive change was intended, prior law and legislative history cannot be used to alter or disregard the express terms of a code provision when its meaning is clear." Construing the statute according to its plain and ordinary meaning, Entergy is a general contractor because it "[undertook] to procure the performance of work from IMC." Thus, Entergy was entitled to the Labor Code's exclusive remedy defense and the fact that it also owned the premises where the accident occurred was immaterial.