Passion. Preparation. Persistence.

Volume 5, Issue 6

THE BASSETT BULLETIN ™

PREMISES OWNERS CAN NOW QUALIFY FOR THE TEXAS LABOR CODE'S EXCLUSIVE REMEDY DEFENSE

Can a premises owner meet the Texas Labor Code's general contractor definition, entitling the owner to protection from suit by a subcontractor's employee? Apparently, Yes. The Texas Supreme Court, in a controversial decision, ruled on this issue in *Entergy Gulf States, Inc. v. Summers*, 50 Tex. Sup. Ct. J. 1140, No. 05-0272, 2007 Tex. LEXIS 799 (Tex. Aug. 31, 2007). The Court held that under the Texas Labor Code's definition, a premises owner can be classified as a general contractor.

Therefore, a premises owner can qualify for the Texas Labor Code's exclusive-remedy defense by (1) undertaking to procure performance of work or services, (2) entering into a written agreement to provide workers' compensation insurance for those whom the owner is procuring the work or service, and (3) obtaining an insurance policy and paying the required premiums.

THE FACTS OF THE CASE

Entergy Gulf States, Inc., ("Entergy") contracted out the construction and maintenance work of its Sabine Station facility to International Maintenance Corp. ("IMC'). John Summers, the Plaintiff, worked directly for IMC.

A contract entered into between the entities specified Entergy would not be precluded from being able to assert the "Statutory Employee" defense. Entergy later amended the contract to recognize itself as a statutory employer of IMC's workers while IMC would remain their direct employer. Entergy also provided workers' compensation insurance to IMC's workers by obtaining a policy and paying the required premiums. Entergy did this in exchange for a lower contract price from IMC.

Subsequently, John Summers was injured at the Sabine Station facility. He received workers' compensation benefits under Entergy's policy then sued Entergy for negligence. Entergy moved for summary judgment in the trial court and won. Entergy argued that it was Summers' subscribing employer and was therefore protected from a negligence suit under the Texas Labor Code. Entergy argued that Summers' remedies for his injury were limited to his workers' compensation benefits.

Summers appealed to the Ninth District Court of Appeals, which overturned the trial court's summary judgment. Under their interpretation of how both a general contractor and subcontractor is defined, a premises owner and a general contractor could not be the same, reasoning that one cannot contract with one's self.

The Texas Supreme Court reversed, holding that nothing precludes a premises owner from being a general contractor under the Texas Labor Code.

THE SUPREME COURT'S RATIONALE

The Texas Supreme Court based their opinion largely on the text of the Labor Code itself, giving all the applicable language its clear and specific meaning. Under the Labor Code, a general contractor is "a person who undertakes to procure the performance of work or a service, either separately or through the use of subcontractors." Tex. Lab. Code § 406.121(1). Similarly, a subcontractor "means 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." Tex. Lab. Code § 406.121(5).

Under these definitions, the Supreme Court found neither a mandate nor an implication that a premises owner could not serve as its own general contractor. Therefore, since Entergy procured work from IMC, contracted to be IMC's statutory employer, and provided and paid for the workers' compensation insurance, Entergy "was a general contractor that was entitled to the Labor Code's exclusive-remedy defense." The fact that Entergy was also the premises owner was "immaterial."

SO WHAT DOES THIS MEAN?

If an employee is injured on the job and his or her employer provides workers' compensation benefits, that employee is limited to the benefits provided under the workers' compensation benefits policy. This means he or she cannot sue the employer for negligence and all its accompanying damages.

It's now clear that premises owners have the option of shielding themselves from a subcontractor's employee's negligence suit by contracting beforehand to be a statutory employer and providing for workers' compensation insurance. The most important thing is to have a written contract in place delineating such a relationship and actually procuring and paying for the coverage. It gives premises owners more choices when hiring others to perform their work. Prior to this case, premises owners could not meet the definition of a general contractor under the Labor Code.

It should be noted that this decision will be revisited fairly soon in light of the Texas Legislative Council and some State Representatives' recent comments. Both allege that this decision may have misstated legislative history and was wrongly decided. Mary Alice Robbins, *Legislative Council Claims Opinion Mistaken About Law's History*, Texas Lawyer, Dec. 24, 2007, at 1. On April 4, 2008, the Texas Supreme Court granted a Motion for Rehearing.

If this case is reversed or if the ruling changes, we'll let you know.

The Bassett Firm

Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
***Toll Free:* 1-800-310-9769**
www.thebassettfirm.com

ATTORNEYS

- **MIKE H. BASSETT**
- **JENNIFER R. ELDRIDGE**
- **CHRISTINE S. JOHNSON**
- **ROBERT L. MCGEE, JR.**
- **DEAN MIYAZONO**
- **MICHAEL J. NOORDSY**
- **MATHEW SAMUEL**
- **JEFF A. WELLS**

Information regarding *The Bassett Bulletin*™ is available from **Angie Stevenson** ***(astevenson@thebassettfirm.com)*** at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

The Bassett Bulletin ™ is published twenty-six times a year, and is a complimentary publication of The Bassett Firm.