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## THE BASSETT BULLETIN™

### DUTY TO WARN AN INDEPENDENT CONTRACTOR

The First District Court of Appeals in Houston recently held that a (1) building owner and (2) general contractor have a duty to inspect the premises and warn an independent contractor of any dangerous conditions. *Griffin v. Shell Oil Company*, 01-09-01089-CV (1<sup>st</sup> Dist. June 22, 2011).

#### FACTS OF THE CASE

Tracy Griffin worked as an employee of CFS Mechanical, Inc., a subcontractor. Griffin was injured when he tripped and fell over a pallet, which was located on the floor in standing water in a storage room in a building owned by Shell Oil Company (“Shell”).

An employee of CH2M Hill IDC Facilities, Inc. (“CH2M”), which was the “project manager” at the Shell building, had told Griffin to inspect the drainage issues in the storage room.

The evidence demonstrated that Griffin knew the condition of the storage room. Griffin testified that he knew it was dimly lit, wet, and items were piled up in the storage room. However, Griffin also testified that the piles of items were frequently moved around and he never knew exactly what he would find when he went in the room.

Griffin brought suit against both Shell and CH2M, alleging that they knew about the standing water, dim lighting, and the incorrectly stored material in the storage room and had failed to adequately warn him of the conditions.

At the trial court, both Shell and CH2M filed a Motion for Summary Judgment on Griffin’s premises-defect claim.

Shell alleged that there was no evidence of a concealed defect in the storage room. Alternatively, Shell argued that Griffin's knowledge of the storage room's condition negated any legal duty owed to Griffin. CH2M alleged that Shell controlled the storage room and it had not breached any legal duty owed to Griffin.

The trial court granted Shell's and CH2M's motions.

On appeal, Shell argued that the trial court's ruling was proper because Shell owed no legal duty to Griffin because he had not presented evidence of a "concealed defect" in the storage room. In the alternative, Griffin was aware of the conditions in the storage room, negating the existence of a concealed defect. CH2M argued that it was not the general contractor and it did not actually control the storage room.

The Appellate Court reversed the trial court's rulings. The Court found that a Shell site manager had admitted that his duties at the building included the management, maintenance, and safety of the storage room. In addition, after the accident, Shell took steps to improve the condition of the storage room where Griffin was injured. Thus, the Court concluded, there was evidence that Shell did control the storage room.

The Court also focused on Griffin's testimony about the objects found in the storage room. Although Griffin was aware of the dangers that existed in the storage room, Griffin had presented evidence that the specific items in the storage room were constantly changing. Griffin testified that objects stored in the room were constantly moved and new items were brought in and stored.

The Court concluded that Shell owed Griffin a duty to inspect the premises and warn him of the dangerous conditions.

Regarding CH2M, the Court found that there was some evidence that CH2M acted as a general contractor and had control over the conditions in the storage room that caused Griffin's injuries. Accordingly, CH2M had a legal duty to warn Griffin of the hidden or concealed conditions in the storage room.

The Court relied on the testimony from a CH2M's representative that she provided "project management" services at the Shell building. The representative also testified that she oversaw all of the infrastructure and constructive changes to the building.

In addition, Griffin provided testimony that CH2M had control over the conditions in the storage room because it instructed other subcontractors to use the storage room to store items. Griffin also testified that he reported to the CH2M representative almost everyday. The Court concluded that there was an inference that CH2M was acting as a general contractor.

The Court concluded that evidence existed that CH2M had a legal duty to warn Griffin of the hidden or concealed conditions in the storage room arising from the storage and stacking of unsecured items.

## HOW DOES THIS CASE AFFECT YOU

As the owner of the premises or someone in control of the premises, you have certain obligations to workers on your premises. These obligations are as follows:

- ☆ Thoroughly inspect the premises for any dangerous conditions;
- ☆ Warn anyone who will be entering the premises, including employees of independent and subcontractors, of any dangerous conditions;
- ☆ Describe the responsibilities of the general contractor and what areas it controls; and
- ☆ If your premises has a storage area, only allow certain designated individuals to access the area so that these individuals will be aware of the conditions of the storage area.



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