



**Texas Supreme Court Rules that Premises Owners Can Enjoy Immunity as
Employers of Contractor's Employees**

On August 31, 2007 the Texas Supreme Court held that a premises owner that hires a contractor to perform work on the premises may enjoy immunity under the Texas Labor Code from claims of the contractor's injured employee. In *Entergy Gulf States, Inc. v. John Summers*, No. 05-0272 (Tex. August 31, 2007), the Court recognized that a premises owner can also be considered a "general contractor" under Tex. Lab. Code Section 406.121(1). As a general contractor, the premises owner is considered "... the employer of the subcontractor and the subcontractor's employees" for purposes of worker's compensation laws. *See, Id.* Section 406.123(e). Under Texas law, worker's compensation benefits are the exclusive remedy against an employer for an employee's work related injuries, therefore, the premises owner is immune from tort claims of the contractor's employees. *See, Id.* Section 408.001(a)

In the underlying matter *Entergy Gulf States, Inc.* ("Entergy") contracted with International Maintenance Corp. ("IMC") to perform construction and maintenance work on Entergy's Sabine Station plant. An employee of IMC was injured on the Entergy location and sued Entergy. The contract between IMC and Entergy referred to IMC as an independent contractor and stated that IMC's status would not bar Entergy from raising the "statutory employer" defense. In addition, Entergy included a letter addendum to the contract providing that Entergy would be recognized as the statutory employer of IMC's employees while IMC would remain the "direct employer". Finally, Entergy agreed to secure worker's compensation insurance for IMC employees in return for a reduction in IMC's charges for work on the Entergy location. Interestingly, the Court did not specifically rely on Entergy's provision of worker's compensation insurance as a basis for its holding.

The Court's opinion was based upon the post 1993 revisions to the Texas Labor Code which contains a less stringent definition of subcontractor. In summary, the Court found that the current Code definition does not prevent a premises owner from being considered a general contractor which undertakes to perform work on the premises by retaining subcontractors. *See, Id.* Section 406.121(5)



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The *Entergy* opinion will likely have a significant impact on premises owners, contractors and their respective insurers working in Texas. Based upon this ruling, premises owners may rely less upon enforceable contractual indemnity agreements and more upon statutory employer clauses as a means to avoid exposure to work related claims of contractor's employees. It must be stressed, however, that this opinion applies only to bodily injury claims of contractor's employees. Claims for property damage, business interruption or consequential damages of contractors must still be dealt with through enforceable indemnification, limitation or insurance coverage agreements.

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