

Landowner Liability for Injuries to Employees of Independent Contractors

by J. Phillip Bryant, CPCU, J.D.



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Owners of land, or their property managers, often hire independent contractors to perform work on the premises. But if an employee of that independent contractor is injured and is covered by workers compensation, can he effectively claim premises liability against the landowner? Many jurisdictions hold that the contractor's employee cannot sue the landowner, but exceptions to that general rule may apply. Other states invoke a similar rule but without a direct connection to the applicability of workers compensation. This article mentions only states that base their analyses on the presence of workers compensation coverage.



Assume a homeowner hires a contractor to replace the roof. The contractor's employee falls to the ground, sustaining serious injury. Alternatively, consider a common scenario that a business hires a janitorial firm to clean its offices afterhours. Is the business liable to the firm's employee if he trips and falls over loose carpet? Either one of these injured people may consider making claims for premises liability against the landowner.

If the injured worker is subject to the jurisdiction's workers compensation

laws, the worker may be precluded from suing the landowner in tort, subject to exceptions. For instance, under Missouri law, the general rule is that a landowner is not liable for injuries to the employees of independent contractors for work done on the premises if the employees are covered by the independent contractor's workers compensation insurance. In Missouri, that is true even in cases where the landowner was directly negligent. The rule is adopted to reflect the "economic reality" of the workers compensation system.

Where a contractor's employees are covered by workers compensation, the amount that the contractor charges the landowner includes the cost of the contractor's workers compensation insurance. To make a landowner liable for the injuries suffered by the independent contractor's employees would, in effect, force the landowner to pay for the same injury twice. The key issue is whether the independent contractor was subject to workers compensation laws, not whether the injured employee actually recovered workers compensation benefits.

In Kansas, a hole that had been cut into the floor of a meat packing plant was obscured by debris. A contractor's employee stepped into the hole injuring her ankle and knee. That employee collected workers compensation benefits and filed a separate lawsuit in which she alleged that the property owner was negligent in maintaining a dangerous condition and in failing to warn of the dangerous condition. The Kansas court followed Missouri's rationale to bar a cause of action against a landowner in

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these circumstances except in cases in which the landowner exerts sufficient control over the details of the work.

A California court denied recovery against a homeowner by an independent contractor's worker when that employee fell from a ladder and was burned by hot tar. That court noted that the employee was subject to workers compensation coverage and the doctrine of peculiar risk afforded no basis for the employee to seek recovery of tort damages from the homeowner who hired the contractor but did not cause his injuries.

In Wisconsin, during the demolition of a property owner's building, an independent contractor's employee was injured when he fell through the roof. That court held that an employee of an independent contractor was precluded from receiving workers compensation benefits from his employer and also maintaining a tort action against the person who employed the contractor unless that person was affirmatively negligent with respect to the employee.

As with most any rule, exceptions may apply. A common exception to this rule is that the landowner may be liable when the landowner substantially controls the physical activities of the employees involved or the manner in which the work is done. Questions may then arise, given the particular facts, of the amount of control exercised by the landowner needed to reach a level of substantial control to make him/her liable.

It has been found that a landowner present at a job site solely to insure that construction would proceed properly was a degree of supervision inadequate to impose liability on the landowner. In a separate case, a landowner was found not to have exhibited the required degree of substantial control merely because the landowner chose a type of paint that was not available in a safety spray.

A landowner who spoke to a worker about being sure there was adequate insulation around pipes under the floor joists and not to insulate around a ceiling fan was found not to have substantially controlled the worker's activities. That landowner made no effort to tell the worker how to do his job, how he was to proceed, or in what order the job should proceed.



The property owner's selection of a project manager who allegedly committed negligent acts was found not to be substantial

control. Even though a landowner insisted that windows of a tall building be washed from the outside rather than the inside, the landowner was found not to have exhibited substantial control when the window washer made a claim for injuries following his fall.

Holding a worker's ladder and handing a wrench to him were found to not reach a level of substantial control. A landowner who suggested a location for the placement of a cable along a roof beam did not exhibit substantial control.

A landowner who told workers the location of a damaged utility pole and supplied cable to perform splicing did not exhibit the required substantial control. A landowner did not exert substantial control even though the landowner created drawings for the workers to follow, approved a sequence of construction, and dictated how the workers were to install cables.

Some states recognize an exception sometimes called the Peculiar Risk Doctrine or the "inherently dangerous"

exception. This exception requires that, at the time of engaging the contractor, the principal should foresee that the performance of the work or the conditions under which it is to be performed will, absent precautionary measures, probably cause injury. Such work has been described as work necessarily attended with danger, no matter how skillfully or carefully it is performed. That is, work is inherently dangerous if the danger exists in the doing of the activity regardless of the method used.

If proper precautions can minimize the risk of injury, many jurisdictions do not consider the activity to be inherently dangerous. For example, it has been found that working with asbestos can be perilous, but that is not enough to render the job inherently dangerous. Consider the case of an employee killed while working in a deep trench when the sides caved in. It was held that trenching is not intrinsically dangerous work. Although working in a trench can be dangerous, the use of proper procedures renders the work relatively safe.

Examples of inherently dangerous activities include working with toxic gases or transporting nuclear waste. The states that impose liability for inherently dangerous activities do so because of public policy concerns. The employer of the contractor is not permitted to shift the responsibility for the proper conduct of the work associated with abnormally dangerous activities to the contractor.

Of those states that recognize the peculiar risk doctrine, it typically does not apply if the dangerous condition is obvious to the contractor. Some states refuse to apply the peculiar risk exception if the purportedly dangerous condition was the part of the premises on which the contractor was working. The rationale is that the contractor was notified of the dangerous condition when it contracted to repair that matter.

California and Missouri do not permit actions against landowners for injuries to employees of independent contractors covered by workers compensation who are injured while performing inherently dangerous activities. Wisconsin does permit actions when the independent contractor's employee is injured while performing inherently dangerous activities.

In the event that the employee of an independent contractor who is subject to workers compensation laws makes a claim for injuries against a landowner, an analysis should be made of the extent of control that the landowner exercised over the worker's activities or over the job site. A determination may also be warranted if the worker was engaged in an inherently dangerous activity at the time of his/her injury. ■