

# IN THE SUPREME COURT OF TEXAS

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No. 05-0272

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ENTERGY GULF STATES, INC., PETITIONER,

v.

JOHN SUMMERS, RESPONDENT

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ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS

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**Argued January 24, 2007**

JUSTICE WILLETT delivered the opinion of the Court.

In this workers' compensation case we decide whether a premises owner can also be a "general contractor" under the Labor Code and thus qualify for the exclusive-remedy defense. We hold that a premises owner that "undertakes to procure" work falls within the statute's definition of a general contractor.

## **I. Background**

John Summers sued Entergy Gulf States, Inc. for injuries he sustained while working at Entergy's Sabine Station plant as an employee of International Maintenance Corp. (IMC). IMC had contracted with Entergy to perform construction and maintenance on Entergy's premises. This contract refers to IMC as an "independent contractor" and "contractor," while referring to Entergy and its affiliates as "Entergy Companies." The portion of the contract defining IMC as an independent contractor specifies that this language should not be construed to bar Entergy from raising the "Statutory Employee" defense. Entergy later sent IMC a letter, which included an addendum to the contract, providing that the parties would recognize Entergy as the statutory employer of the IMC employees (while IMC would remain the "direct employer") in order to take advantage of a Louisiana law that shields statutory employers from tort liability.[\[1\]](#)

Entergy also agreed to provide workers' compensation insurance to IMC's Sabine plant employees in exchange for a lower contract price. Entergy obtained an insurance policy and paid the premiums. While this policy was in effect, Summers was injured at the Sabine plant. He applied for and received benefits under the policy, then sued Entergy for negligence. Entergy moved for summary judgment, arguing that it was a general contractor, and thus a deemed employer shielded from Summers's suit under the Texas Workers' Compensation Act, as now

codified in the Texas Labor Code.<sup>[2]</sup> The district court agreed and granted summary judgment in Entergy's favor. The court of appeals reversed.<sup>[3]</sup>

## **II. Discussion**

The Labor Code makes workers' compensation benefits an employee's "exclusive remedy" against an employer for covered work-related injuries.<sup>[4]</sup> It defines "general contractor" as "a person who undertakes to procure the performance of work or a service, either separately or through the use of subcontractors."<sup>[5]</sup> A general contractor "may enter into a written agreement [with a subcontractor] under which the general contractor provides workers' compensation" coverage to the subcontractor and the subcontractor's employees,<sup>[6]</sup> and such an agreement "makes the general contractor the employer of the subcontractor and the subcontractor's employees" for purposes of the workers' compensation laws.<sup>[7]</sup>

### **A. Whether a "Written Agreement" Exists Under the Act**

As a threshold matter, Summers argues that Entergy failed to satisfy section 406.123's requirement that the general contractor (Entergy) and subcontractor (IMC) execute a written agreement under which Entergy would provide workers' compensation coverage. Entergy counters that a reference to "O.P.I.P. wage rates" in a "Blanket Contract Order" sent to IMC constitutes the requisite agreement because this acronym refers to "owner provided insurance program."

Summers's "no written agreement" argument was not raised in the trial court as a ground for denying summary judgment. Thus, Summers has waived this argument.<sup>[8]</sup> The sole

remaining question is whether Entergy is a “general contractor” and thus a deemed employer under the Labor Code.

## **B. Whether Entergy Is a “General Contractor” Under the Act**

### **1. *The Act’s Current Definitions of “General Contractor” and “Subcontractor” Do Not Preclude a Dual Role for Premises Owners***

“Our primary objective” when construing statutes “is to determine the Legislature’s intent, which, when possible, we discern from the plain meaning of the words chosen.”<sup>[9]</sup> Where the statutory text is unambiguous, we adopt a construction supported by the statute’s plain language, unless that construction would lead to an absurd result.<sup>[10]</sup> We presume that every word of a statute was used for a purpose,<sup>[11]</sup> and likewise, that every word excluded was excluded for a purpose.<sup>[12]</sup>

The court of appeals determined that Entergy was not a general contractor because “Entergy did not establish it had undertaken to perform work or services and then subcontracted part of that work to IMC, as a general contractor would have done.”<sup>[13]</sup> The court borrowed from the decision in *Williams v. Brown & Root, Inc.*, stating that “[a] general contractor is any person who contracts directly with the owner, the phrase not being limited to one undertaking to complete every part of the work.”<sup>[14]</sup> The *Williams* court noted that an entity that “did not contract with the owner, but instead was the owner” was arguably not protected by the exclusive-remedy provision.<sup>[15]</sup> Rather than adhering to the Labor Code’s specific definition of “general contractor,”<sup>[16]</sup> the *Williams* court looked to a secondary source, *Corpus Juris Secundum*.<sup>[17]</sup> But the Legislature has instructed that where words are statutorily defined, courts should

construe the terms according to that particular meaning.<sup>[18]</sup> Contrary to the suggestion in *Williams* that an owner cannot be a general contractor because it cannot contract with itself, the Labor Code's definition of "general contractor" does not prohibit a premises owner who "undertakes to procure the performance of work or a service" from also being a general contractor.<sup>[19]</sup>

The *Williams* court and the court of appeals in this case also relied on *Wilkerson v. Monsanto Co.*, in which a federal district court held that a premises owner was not a statutory employer.<sup>[20]</sup> *Wilkerson's* analysis, however, turned on the statute's then-applicable definition of a "subcontractor" as "a person who has contracted to perform all or any part of the work or services which a prime contractor has contracted with *another* party to perform."<sup>[21]</sup> *Wilkerson* interpreted the reference to a prime contractor's having "contracted with another party" as indicating that the prime contractor and premises owner could not be the same entity.<sup>[22]</sup> The currently applicable definition of "subcontractor," however, reads: "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."<sup>[23]</sup> This present-day definition does not preclude a premises owner from serving as its own general contractor and undertaking to perform work on its premises by retaining subcontractors. We therefore disagree with the court of appeals in the pending case that the current definition of subcontractor is inconsistent with a premises owner acting as general contractor.

In short, the governing Labor Code definitions of general contractor and subcontractor do not forbid a premises owner from also being a general contractor.

2. *A Generic Statement Disclaiming Substantive Changes Cannot Trump the Statute's Clear and Specific Wording*

Summers maintains that under *Williams* and *Wilkerson* the pre-1993 statute precluded this dual role. He further argues that the Labor Code's statement that 1993 amendments were intended to revise the law "without substantive change"[\[24\]](#) indicates that the Legislature intended to exclude premises owners from the definition of general contractor. The general statement that a recodification is not intended to effect substantive changes does not, however, override the plain wording of the statutory provisions directly in issue in this case. "While we generally presume the Legislature accepts judicial interpretations of a statute by reenacting it without substantial change," we recently made clear that "we do not make that presumption when there have been substantial changes, or when it would contradict the statute's plain words."[\[25\]](#) 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 from the code when considered in its entirety, unless there is an error such as a typographical one."[\[26\]](#) General statements that no substantive change is intended "must be considered with the clear, specific language used" in the substantive provisions of the revised code, and "[t]o the extent that these latter sections of the [code] do change prior law, the specific import of their words as written must be given effect."[\[27\]](#) In this case, the current definitions of general contractor and subcontractor contain no language mandating or implying that a premises owner cannot serve as its own general contractor.

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.<sup>[28]</sup> That Entergy took on the task of procuring<sup>[29]</sup> the performance of work from IMC is beyond dispute: Deposition testimony established that Entergy hired IMC to supply workers to perform maintenance, including “water and turbine-related, generator-related work,” at its Sabine Plant. Thus, Entergy was a general contractor entitled to the Labor Code’s exclusive-remedy defense. The fact that Entergy also owns the premises where the accident occurred is immaterial.

### III. Conclusion

Labor Code section 406.123 bars Summers’s tort claims. Accordingly, we reverse the court of appeals’ judgment and render judgment in favor of Entergy.

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Don R. Willett

Justice

Opinion delivered: August 31, 2007

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<http://www.austinchronicle.com/gyrobase/Issue/story?oid=oid%3A574169>

### Justice and Worker Safety

BY LEE NICHOLS

Labor leaders and legislators used **International Human Rights Day** (Dec. 10) to draw attention to a **Texas Supreme Court** decision from this summer, which they say threatens worker safety and the ability of workers to sue when injured by negligent

employers. In the case of ***Entergy v. Summers***, the all-Republican court ruled the owner of a business can also be considered the general contractor for work done on the business property, and if that business owner has purchased a certain type of workers' compensation insurance, then temporary employees brought on-site are prevented from suing for injuries by Texas' workers' comp laws. **Texas labor law** says workers' comp benefits are the "exclusive remedy" for work-related injuries incurred by covered employees. Labor officials and lawmakers said the relevant portion of the Labor Code, Section 406.123, was not intended to define premises owners as general contractors.

The plaintiff, **John Summers**, argued that when he was injured while performing construction and maintenance work at Sabine Station plant of **Entergy Gulf States Inc.**, his direct employer was **International Maintenance Corp.**, the company hired to perform the job. Entergy argued that since it was the company that hired IMC, it was the general contractor employing Summers and that he was covered by their policy, and thus they could not be sued. In the Aug. 31 opinion, Justice **Don Willett** wrote that the court had looked at the plain language of the law and "the governing Labor Code definitions of general contractor and subcontractor do not forbid a premises owner from also being a general contractor."

On Dec. 10, **Becky Moeller**, president of the **Texas AFL-CIO**, called the portion of the law on which the court relied, "an obscure, 15-year-old nonsubstantive recodification of the Labor Code," and said, "The Texas Supreme Court has gouged a giant hole in the legal protections for Texas workers by giving large-business owners a technical loophole to escape the consequences of their own wrongdoing."

Until the Texas Supreme Court waltzed into this issue, the Texas Legislature, even at the height of the tort-reform craze, had declined to go this far in closing the courthouse doors to injured workers, despite repeated efforts by the anti-lawsuit lobby. Sen. **Kirk Watson** of Austin echoed that, saying, "The Court reached a result that the Legislature has rejected over and over again. The Legislature has avoided reducing and has, instead, worked to assure worker protections and also make sure employers keep a commitment to safety."

"Non-substantive re-codifications of statutes are a constitutionally mandated duty of the Legislature ... specifically meant to NOT change the intent of law," said Brownsville Sen. **Eddie Lucio** in a statement. "In the Entergy decision, the Texas Supreme Court has violated the separation of powers in this state using judicial activism to write law."

Moeller said the AFL-CIO will call for a rehearing and reversal of the decision and will participate in any legislative hearings called to discuss the case.

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<http://www.setexasrecord.com/news/218306-texas-supreme-court-reaffirms-liability-ruling-in-entergy-case>

***Texas Supreme Court reaffirms liability ruling in Entergy case***  
***4/3/2009 4:24 PM By Chris Rizo***



Paul Green (R)

AUSTIN(Legal Newslne)- Industrial plants, including refineries, are protected against some types of liability claims filed by injured contract workers, the Texas Supreme Court reaffirmed Friday, drawing praise from a legal reform group.

In a 6-3 ruling that reaffirmed its 2007 opinion in the case, the state high court again agreed with Entergy Gulf States Inc. that a general contractor providing workers compensation insurance to a subcontractor is protected from negligence claims that may be brought by a subcontractor's injured employee.

The decision was hailed by Richard Trabulsi, president of Texans for Lawsuit Reform.

"The Texas Supreme Court has done exactly what a court is supposed to do. They have ignored a firestorm of criticism from personal injury trial lawyers and followed the law as written," Trabulsi said.

"Courts should always interpret statutes to mean what the words of the statute plainly say, just as the Court did today."

The case involves Entergy Gulf States Inc. and John Summers, an employee with International Maintenance Corp. who sued over injuries he suffered in 2001 while repairing a leak on a hydrogen generator at the power company's Bridge City, Texas, plant.

New Orleans-based Entergy had provided workers compensation insurance covering IMC employees. Summers, a turbine mechanic, received benefits under Entergy's policy and later sued Entergy for negligence, seeking additional compensation.

A trial court ruled in favor of Entergy, but the decision was overturned by a state appeals court.

Entergy appealed to the Texas Supreme Court, asking justices to decide whether a business that hires subcontractors to perform work at its site and provides them workers compensation protections is shielded from workers' negligence claims.

The Texas Supreme Court ruled that because Summers was covered by a workers compensation policy purchased by Entergy, he could not collect damages from the company for alleged negligence.

"A general contractor is a person who takes on the task of obtaining the performance of work," the court's majority opinion by Justice Paul Green said. "That definition does not exclude premises owners; indeed it describes precisely what Entergy did."

The ruling comes as state lawmakers are working to reverse the high court's 2007 ruling. They have argued that the state's compensation law was never intended to apply to contractors.

The case is Entergy Gulf States Inc. v. Summers, NO. 05-0272.

*From Legal Newsline: Reach staff reporter Chris Rizo at [chrisrizo@legalnewsline.com](mailto:chrisrizo@legalnewsline.com).*