



*Entergy Gulf States, Inc. v. John Summers*¹ General Contractor, and Workers Compensation: How The Texas Supreme Court Has Brought Them all Closer

The Texas Supreme Court recently issued an opinion, not released for publication, that may have a significant impact on how industrial plants and refineries protect themselves from liability of a third party contractor injury at their site. The unanimous decision by the Court enables plant owners to shield themselves from liability to employees of third party contractors for workplace injuries under the current Texas workers' compensation laws.

The Entergy Facts

International Maintenance Corp. (IMC), contracted with Entergy to perform construction and maintenance at Entergy's Sabine Station plant. Under the terms of the contract and an addendum, the parties recognized Entergy as the statutory employer of the IMC employees, including John Summers. IMC would remain the direct employer. In consideration for IMC lowering the contract price for the work they would perform, Entergy agreed to provide workers' compensation insurance to the IMC employees working at the Sabine plant. During the time IMC was performing this job, John Summers was injured. Mr. Summers applied for and received benefits under Entergy's workers' compensation insurance policy, and then sued Entergy for negligence. In response to the suit, Entergy moved for summary judgment, arguing that it was a general contractor and therefore shielded from liability by the provisions of the Texas Workers' Compensation Act. The district court agreed with Entergy's argument and granted the summary judgment. On appeal by John Summers, the court of appeals reversed the district court's decision. The Texas Supreme Court agreed with the district court, reversed the decision of the court of appeals and rendered judgment in favor of Entergy.

The Ruling

The Texas Labor Code establishes that workers' compensation benefits are an employee's "exclusive remedy" against an employer when the employee is injured on the job. The Code further states a "general contractor" may enter into a written agreement under which the general contractor provides workers' compensation coverage to the subcontractor's employees, thus making the "general contractor" the employer of the subcontractor employees. The significance of the distinction is that the "general contractor" is shielded from a negligence suit for covered work-related injuries under the Texas Workers' Compensation Act.

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Case Analysis by
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Earlier court rulings by various Texas courts held that a premises owner could not be a statutory employer, thus unable to be protected under a workers' compensation policy for a work-related injury of a subcontractor's employee. The rulings were all based on the then-applicable statutory definitions of "general contractors" and "subcontractors" under the statute. However, the Texas Supreme Court now interprets the current definition of the statute as allowing a premises owner to serve as its own general contractor and allowing it to retain subcontractors to perform work.

The Texas Supreme Court stated in its opinion that "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." As a consequence of this finding, the Court held that a plant or refinery owner, although the premises owner, can be a general contractor and entitled to protection under the Texas Workers' Compensation's exclusive-remedy defense. Because of this distinction, any tort claim based on negligence arising from a work-related injury covered by a workers' compensation policy will be barred.

The Possible Implications of *Entergy v. Summers*

As a result of this decision, refinery and plant owners will evaluate the costs incurred by purchasing workers' compensation policies to cover contract workers versus the costs of potential multi-million dollar lawsuits based on tort claims arising from work-related injuries. By contracting as a general contractor with the subcontractors and purchasing workers' compensation policies, refineries and plants will limit their liability in the event a contract employee suffers a work-related injury or a plant catastrophe occurs involving numerous injuries. An interesting note to the timing of this decision is the current litigation involving an explosion at a BP refinery in Texas City in 2005. Based on the Texas Supreme Court's opinion in *Entergy*, numerous lawsuits that have settled or are currently being tried on behalf of injured contract workers at the BP refinery would not have been viable, provided that BP purchased applicable Workers' Compensation Insurance as a general contractor, which would have triggered the workers' compensation's exclusive remedy defense barring any tort claims based on negligence. The *Entergy* decision will no doubt change the landscape of general contractor and premise owner liability.

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END NOTES:

¹**Entergy Gulf States, Inc. v. Summers**, 2007 WL 2458027, 50 Tex. Sup. Ct. J. 1140 (Tex. Aug 31, 2007) (NO. 05-0272), rehearing granted (Apr 04, 2008).

This article is not intended as legal advice to a specific problem or issue. If you have a question about toxic tort law, please contact the Powers & Frost attorney with whom you work or James H. Powers, Administrative Partner.

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