

OWNER'S AND CONTRACTOR'S PROTECTION EXPANDED BY SUPREME COURT RULING

Author(s): Daniel M. Steinberg

In a June, 2010 opinion, the California Supreme Court affirmed and expanded its position that claims by independent contractors against project owners and general contractors for construction-site injuries are not permitted in California.

In its last opinion on the subject in 1993, the Supreme Court held that a project owner was not liable for the injuries suffered by an independent contractor's employee because those injuries are covered by workers' compensation insurance, which is usually charged to the owner in the contract price. In its new ruling, the Court importantly expanded its 1993 decision to provide that the protections for project owners and upper-tier contractors do not depend on the existence of worker's compensation insurance for the injured employee's protection.

In the Court's newest case, Ramos Oil Company hired Fillner Construction as the general contractor to expand a commercial fuel facility in Dixon, California. Fillner, as the general contractor, hired subcontractor Lane Supply to erect a canopy over some fuel pumps. Lane Supply subcontracted the work to Perry Construction, which hired independent contractor Jeffrey Tverberg as foreman of the two-man erection crew. Tverberg was a self employed independent contractor who held his own general contractor's license. He was not Perry's employee. Tverberg was injured when he fell into an open excavation at the job site and sued Fillner, the general contractor, for damages. The trial court rejected his claims against Fillner.

On appeal, Tverberg claimed that Fillner was responsible for his injuries under the "peculiar risk" doctrine (despite the fact that he was an independent contractor separated from Fillner by *two subcontracts*). The peculiar risk doctrine was developed by the courts to provide recovery to *innocent third parties* who were injured by the negligence of an independent contractor hired by the property owner to do "inherently dangerous" work. The doctrine, based on the principles of

fairness, makes an owner “vicariously liable” for third party injuries, despite the owner’s complete innocence in causing the injury. For example, a construction site mishap that injures a pedestrian on an adjoining sidewalk could result in an owner’s vicarious liability under the peculiar risk doctrine. Tverberg was attempting to apply the doctrine to Fillner, the general contractor.

In rejecting Tverberg’s peculiar risk doctrine claim, the Supreme Court drew a strong distinction between an “innocent third party” and an independent contractor. It found that when hired to perform inherently dangerous work, the independent contractor assumes the authority to determine how the work is performed and the responsibility to see that it is performed safely. Thus, the independent contractor was hardly a “hapless victim of someone else’s misconduct.” Additionally, the Court decided that whether worker’s compensation insurance was available to the injured independent contractor (as in the 1993 case) is not a determining factor. Tverberg did not have worker’s compensation insurance for his own injuries and Fillner’s insurance did not cover injuries to non-employee independent contractors.

Importance of the Supreme Court’s Ruling

While Tverberg’s claim as an independent contractor was against the general contractor, the analysis of the Court applies equally to bar a claim against a project owner. Key to the Court’s analysis was its finding that a hirer (whether an owner or an upper tier contractor) may delegate to an independent contractor the authority to determine how the work is to be performed. The independent contractor then assumes the responsibility to see that the work is performed safely. Having assumed responsibility for his own safety, the independent contractor cannot be an innocent bystander or “hapless” victim of the misconduct of the project owner or upper tier contractor.

The case is also instructive for related reasons. It is possible to eliminate the Supreme Court’s protections by compromising a party’s independent contractor status. This result could occur from the improper retention of control by the owner or upper tier contractor over the methods of performing the work or by taking any action that conflicts with the independent contractor’s responsibility for his/her own safety or that of his/her employees. The owner or upper-tier contractor is well-advised to respect the independent contractor relationship while reaping the benefits of the Court’s protections in this regard. On occasion, it may be difficult to determine if

an action or even a term in a construction contract might jeopardize the independent contractor status of a party, thus negating the protections afforded by this case. If so, you should seek the advice of your legal counsel.