

Employer Liability for Acts of an Independent Contractor

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In the typical construction contractual chain, an owner hires a general contractor, who hires an independent contractor (*i.e.*, a subcontractor) who employs an employee. Sadly, the construction industry is not risk-free. Accidents happen that result in workplace injuries or even fatalities. When this happens, worker's compensation limits an injured employee's ability to recover from his or her employer, the independent contractor. The employee can circumvent this limitation by suing the general contractor, or the owner, or both. The plaintiff hopes that these lawsuits will find deeper pockets with applicable insurance policies. The threshold question in almost all these cases is whether the general contractor or the owner owed the independent contractor employee a duty, either under the common law or under Chapter 95 of the Civil Practice & Remedies Code, the Property Owner's Liability for Acts of Independent Contractors and Amount of Recovery statute ("Chapter 95"). A corollary issue is whether the owner or general contractor exercised control over the independent contractor, because the exercise of control—either by contract or by actual control—creates a duty.

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