

## Construction Law Practice Tip: Employer Liability Update

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**PRACTICES** Construction Litigation, Litigation

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A recent decision by the San Antonio Court of Appeals, *Arredondo v. Techserv Consulting and Training, Ltd.*, touches on two important issues that frequently arise in employer liability cases. AEP Texas Central Company, an electric utility, hired T&D Solutions, LLC to perform transmission line services. T&D removed a power pole standing on AEP's easement on Arredondo's property and allegedly neglected to fill the hole. Arredondo fell in the hole, injured herself, and sued AEP, T&D, and a third party. The trial court dismissed Arredondo's negligence claims and she appealed.

In its first issue, the court decided whether Arredondo's claim against T&D stood in ordinary negligence, as she alleged, or in premises liability, as T&D argued in its defense. These competing negligence claims are not always easy to distinguish. The court held that the claim stood in ordinary negligence. It reasoned that

[i]t has long been recognized that ordinary negligence principles apply to an allegation that a party not in possession or control of the premises acted negligently in creating a dangerous property condition.

In this case, T&D created the dangerous condition when it removed the pole and allegedly failed to fill its hole, and had surrendered control of the premises (the easement) when Arredondo fell and injured herself. The court reversed the trial court's summary judgment as to Arredondo's ordinary negligence claim against T&D. The court compared this case to the Texas Supreme Court's *Strakos v. Gehring* decision. In that case, the Supreme Court held liable under negligence a contractor who left a hole unfilled and hidden by vegetation after relocating a fence. Strakos fell in the hole and injured himself after the contractor finished its work and no longer controlled the premises.

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