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.[2] The district court agreed and granted summary judgment in Entergy's favor. The court of appeals reversed.[3]

II. Discussion

The Labor Code makes workers' compensation benefits an employee's "exclusive remedy" against an employer for covered work-related injuries.[4] 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."[5] 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,[6] 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.[7]

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.[8] 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."[9] 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.[10] We presume that every word of a statute was used for a purpose,[11] and likewise, that every word excluded was excluded for a purpose.[12]

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."[13] 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."[14] 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.[15] Rather than adhering to the Labor Code's specific definition of "general contractor,"[16] the *Williams* court looked to a secondary source, Corpus Juris Secundum.[17] But the Legislature has instructed that where words are statutorily defined, courts should construe the terms according to that particular meaning.[18] 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.[19]

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.[20] *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."[21] *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.[22] 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."[23] 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.[28] That Entergy took on the task of

procuring[29] 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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[1] The letter refers to what is now La. Rev. Stat. Ann. § 23:1061 (1998), which provides a defense to tort liability for a "statutory employer" under Louisiana law. The addendum was suggested by IMC's attorney, was sent by IMC's president from his offices in Louisiana to an Entergy employee in Texas, and was then signed by Entergy and mailed back to IMC. Entergy's Sabine Station plant is located in Texas.

[2] Unless an employee waives workers' compensation coverage, the employee forfeits any common-law or statutory right of action to recover damages from an employer for personal injury or death sustained in the course and scope of employment, Tex. Lab. Code § 406.034, and the employee's sole remedy against an employer is recovery of workers' compensation benefits, *id.* §

408.001(a).

[3] ___S.W.3d___.

[4] Tex. Lab. Code § 408.001(a).

[5] *Id.* § 406.121(1) ("The term includes a 'principal contractor,' 'original contractor,' 'prime contractor,' or other analogous term.").

[6] *Id.* § 406.123(a).

[7] *Id.* § 406.123(e).

[8] *See* Tex. R. Civ. P. 166a(c).

[9] *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006).

[10] *Fleming Foods of Tex., Inc. v. Rylander*, 6 S.W.3d 278, 284 (Tex. 1999).

[11] *Eddins-Walcher Butane Co. v. Calvert*, 298 S.W.2d 93, 96 (Tex. 1957).

[12] *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981).

[13] ___S.W.3d at ___.

[14] *Id.* (alteration in original) (internal quotation marks omitted) (quoting *Williams v. Brown & Root, Inc.*, 947 S.W.2d 673, 677 (Tex. App.—Texarkana 1997, no writ)).

[15] *Williams*, 947 S.W.2d at 677.

[16] The *Williams* court quoted the then-applicable statutory definition of general contractor, *id.* at 676, which is virtually identical to the current definition.

[17] *Id.* at 677 (quoting 17 C.J.S. *Contracts* § 11 (1963)).

[18] Tex. Gov't Code § 311.011(b).

[19] *See* Tex. Lab. Code § 406.121(1).

[20] 782 F. Supp. 1187, 1188 (E.D. Tex. 1991).

[21] Tex. Rev. Civ. Stat. art. 8308-3.05 (Vernon 1991) (emphasis added); *Wilkerson*, 782 F. Supp. at 1189.

[22] *See Wilkerson*, 782 F. Supp. at 1188-89.

[23] Tex. Lab. Code § 406.121(5).

[24] *Id.* § 1.001(a).

[25] *State Farm Life Ins. Co. v. Martinez*, 216 S.W.3d 799, 804 (Tex. 2007) (footnotes omitted).

[26] *Fleming Foods of Tex., Inc. v. Rylander*, 6 S.W.3d 278, 284 (Tex. 1999).

[27] *Id.*

[28] Tex. Lab. Code § 406.121(1).

[29] "Procure" means "to obtain by care or effort, to acquire." Oxford American Dictionary 533 (Eugene Ehrlich et al. eds., 1980) (1979).