

# Application of Employer Negligence for Independent Contractor's Employees' Injuries in Alabama and Florida

This annotation collects and analyzes cases within the jurisdictions of Alabama and Florida to discuss various aspects of the law for each jurisdiction regarding employer negligence for injuries to an independent contractor's employee. While the general rule in both states is that the employer is not liable for injuries to the independent contractor's employees, the twelve cases analyzed reveal a series of exceptions and caveats to this rule.

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## Statutory Text

The Restatement (Second) of Torts § 343A and § 413 provide as follows:

### § 343A. Known or Obvious Dangers.

(1) A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness. (2) In determining whether the possessor should anticipate harm from a known or obvious danger, the fact that the invitee is entitled to make use of public land, or of the facilities of a public utility, is a factor of importance indicating that the harm should be anticipated.

### § 413. Duty to Provide for Taking of Precautions Against Dangers Involved in Work Entrusted to Contractor

One who employs an independent contractor to do work which the employer should recognize as likely to create, during its progress, a peculiar unreasonable risk of harm to others unless special precautions are taken, is subject to liability for physical harm caused to them by the absence of such precautions if the employer (a) fails to provide in the contract that the contractor shall take such precautions; or (b) fails to exercise reasonable care to provide in some other manner for the taking of such precautions.

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### I. Supreme Court

- A. Alabama Power Co. v. Henderson 342 So.2d 323 (Ala.1976)
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### II. Fifth Circuit

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- B. Hill v. US Steel., 640 F.2d 9 (1964)
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- C. City of Miami v. Perez, 509 So.2d at 345-46
- D. Hewett v. Travelers Ins. Co., 538 So.2d 952, 953 (Fla. 1st DCA 1989)
- E. Holsworth v. Florida Power and Light Co., 700 So.2d 705 (1997)
- F. Johnson v. Boca Raton Comty. Hosp., Inc., 985 So.2d 593, 596-97 (Fla. 4th DCA 2008)
- G. Kagan v. Eisenstadt, 98 So.2d 370, 371 (Fla. 3d DCA 1957)
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- I. Mozee v. Champion Int'l Corp., 554 So.2d 596, 598 (Fla. 1st DCA 1989)
- J. Regency Lake Apartments Assocs. v. French, 590 So.2d 970, 973 (Fla. 1st DCA 1991)
- K. Strickland v. Timco Aviation Services, Inc., 66 So.3d 1002 (2011)
- L. Van Ness v. Independent Constr. Co., 392 So.2d 1017, 1019 (Fla. 5th DCA)

## I. Preliminary Matters

### 1. Scope

This entry discusses employer liability with regard to independent contractors; specifically, for injuries sustained by the employee of an independent contractor while working for the employer. The entry focuses on the two jurisdictions of Alabama and Florida.

### 2. Summary

When three different parties--employers, independent contractors, and employee of independent contractor--are involved in employer liability cases, it is first crucial to define the roles and responsibilities of each party within the contractual relationship. Employer enters into a contractual relationship with independent contractor to perform work on property owned by employer. Independent contractor hires employees to perform contracted work. Employee of independent contractor is injured and brings negligence suit against employer of independent contractor.

Under Alabama law, the courts have typically found the employers not negligent in the following situations: when the employer did not have sufficient control of work site, when the independent contractor was considered an invitee, and when the relationship is one of prime contractor-subcontractor. Employer could be found negligent if there was an extraordinary situation that owner did not make employee of independent contractor aware of.

In general, under Florida law, the courts have typically found the employers not negligent in the following situations: when the employer did not have sufficient control of work site, when the independent contractor was considered an invitee, when dangerous condition is not latent, when work performed is inherently dangerous, and when injury is caused by a dangerous instrumentality. Employer could be found negligent if they are found to have committed a specific act of negligence, if they withheld information about a latent dangerous condition or if the individual bringing suit is deemed a third party member of the public by the court.

## II. Alabama

### § 1 General Rule

In the state of Alabama, the owner of a premise must satisfy three requirements in order for negligence to not be actionable. First, if a suit is brought against property owner, the owner must be entered into an owner-independent contractor relationship, or the contract between

owner and independent contractor must delegate responsibility of safety of independent contractor's employees to the independent contractor explicitly, or the owner did not have control over the specific activity that caused injury, or the duty owed by an employer to an employee of the independent contractor is the same as owed to an invitee. The second element that must be met, involves the nature of the danger causing the injury. The dangers causing the injury must either be known or ought to be known, obvious, unknown to employer, intrinsically or inherently dangerous even if reasonable care was exercised, or not due to an extraordinary situation known to employer but unknown to the independent contractor and its employees. Third, the employer will not be found liable for injuries if no inspection was undertaken unless inspection was conducted and it was conducted negligently.

## **§ 2 Contractual relationship between parties**

In *Hughes v. Hughes*, 367 So.2d 1384 (Ala.1979), the plaintiff claimed the contract was worded to establish a prime contractor-subcontractor relationship, therefore placing the duty of providing the employees a safe place to work on the prime contractor, Alabama Power Company; the negligent breach of which caused the injury. The issue is whether Alabama Power and Daniel Construction were in an owner-independent contractor relationship or in a prime contractor-subcontractor relationship. Within a prime contractor-subcontractor relationship the prime contractor has a duty to provide employees with a safe place to work, which is not necessarily true of a owner-independent contractor relationship. The court determined the "reserved right of control, rather than its actual exercise that furnishes the true test of whether the relations between the parties is that of an independent contractor or of employer and employee master and servant." Evidence of the reserve right of control or authority over performance of the work performed must be present for a prime contractor and subcontractor relationship.

In *Hill v. U.S. Steel Corp.*, 640 F.2d 9 (1964), U.S. Steel Corp. and independent contractor J.M. Foster Inc. entered into a contract explicitly stating that the "safety of all persons employed by J.M. Foster and his subcontractors on U.S. Steel Corp. property shall be the sole responsibility of J.M. Foster" (*Hill*). The court in *Hughes v. Hughes* 367 So.2d 1384 (Ala.1979) made very clear that, "...when the terms of a contract are clear and unambiguous, it is incumbent upon the trial court to analyze and determine the force and effect of those terms, as a matter of law" *Hughes v. Hughes* 367 So.2d 1384 (Ala.1979). Thus, in cases with contracts delegating responsibility of independent contractor's employees safety solely to independent contractor, the employer is not held liable for negligence.

## **§ 3 Employer of Independent Contractor's Control Over Worksite**

In *Pate v. U.S. Steel Co.*, 393 So. 2d 992 (Ala. 1981), Pate, the employee of an independent contractor J.M. Foster Inc., sustained injuries while working to built concrete

pedestals on the premises of U.S. Steel Corp. Pate alleged that USS had control over the worksite because USS maintained engineers on the project to ensure progress.

Pate claimed that because U.S. Steel Corporation employed engineers to ensure progress on the construction, it was exercising its reserved right of control. In order to establish that USS had control, Pate cited *Alabama Power Co. v. Henderson* 342 So.2d 323 (Ala.1976). Henderson was injured during the process of pouring concrete, when a form “buckled” and concrete poured onto him. The Court examined evidence which revealed that Alabama Power kept one employee at the concrete mixing site to ensure the concrete was properly mixed and another at the construction site ensuring concrete was correctly poured. The Court in *Alabama Power Co.* concluded that Alabama Power Co. was directly supervising the activities which caused the injury and thus Henderson was able to recover. However, the Court in *Pate* found that U.S. Steel Co. did not directly supervise the activity that led to the injury. The Court stated by employing engineers, “USS's actions merely indicate its concern that the results contemplated by the contract were achieved. This is a legitimate concern of the owner” (*Pate*). In situations where the employer was not directly supervising the activity that led to the injury, generally the employer is not held liable.

#### **§ 4 The Duty Owed to an Invitee/Employee of Independent Contractor**

In both *Hill v. U.S. Steel Co.*, 640 F.2d 9 (1964) and *Green v. Reynolds Metal Co.*, 328 F.2d 372, 374 (5th Cir. 1964) the court cited the findings of *Claybrook v. Bently*, 1954, 260 Ala. 678, 72 So.2d 412 in relation to the duty owed to invitees. In *Claybrook*, the court declared that an owner of a premise owed the employee of an independent contractor the same duty that he/she owed to an invitee. The duty owed to an invitee, as cited in *Hill* and *Green* “is to maintain the premises in a reasonably safe condition and that an invitee assumes all normal or ordinary risks attendant upon the use of the premises; further, that the owner is under no duty to reconstruct or alter his premises to eliminate known or obvious dangers, and that he cannot be held liable for injuries resulting from a dangerous condition which was obvious, or should have been observed in the exercise of reasonable care.”

In *Hill v. U.S. Steel Co.*, Jerry Hill, employee of independent contractor J.M. Foster Inc, fell from a walkway that was clearly elevated. Hill alleged that his injury was due to USS’s failure to provide him with a safe workplace by means of installing a guardrail. According to *Claybrooke*, an employer did not have a duty to alter its premises for the purpose of making it safer when the dangerous condition was obvious. Thus, U.S. Steel Corp was not expected to install a guardrail and was not held liable for injuries resulting from the obvious condition.

An employee of A. Nabakowski Company, Green, had been working at least three months when he fell from the roof to the floor. Green alleged that Reynolds negligently failed to furnish a guard rail around the area from which Green fell. However, *Claybrooke* declared that

employee of independent contractor, Green, was owed the same duty as that of an invitee and as such, assumed the risks of working on Reynolds's premises. Reynolds was not found liable because it had no duty to alter its premises for the purpose of removing "obvious dangers".

### **§ 5 Nature of Danger Encountered During Contracted Work**

*Green v. Reynolds Metal Co.*, 328 F.2d 372, 374 (5th Cir. 1964), addresses situations in which dangers are known by our ought to be known by the independent contractor. In *Green*, an employee of an independent contractor employed by Reynolds, fell from the roof while performing his daily tasks of about three months. Green alleged that Reynolds failed to provide him with a safe work site. However, the court found that Green should have known the dangers, after three months of employment, of working on a roof and that the injury could have also been avoided with reasonable care. The court stated that in Alabama, "(t)he owner of premises is not responsible to an independent contractor for injuries from defects or dangers which the contractor knows of, or ought to know of" (*Green v. Reynolds Metal Co.*, 328 F.2d 372, 374 (5th Cir. 1964)). If the dangers were known or should have been known by the independent contractor and the employee of the independent contractor, then the employer is not held liable.

In the case of *Hill v. U.S. Steel Co.* 640 F.2d 9 (1964), Hill, employee of an independent contractor employed by U.S. Steel Co., was injured while walking on a clearly elevated walkway. Hill filed suit against U.S. Steel Corp. on the grounds that it was negligent. The court cited the opinion in *Claybrook v. Bently*, 1954, 260 Ala. 678, 72 So.2d 412, "... the owner is under no duty to reconstruct or alter his premises to eliminate known or obvious dangers, and that he cannot be held liable for injuries resulting from a dangerous condition which was obvious, or should have been observed in the exercise of reasonable care" (*Hill v. U.S. Steel Co.* 640 F.2d 9 (1964)). Since Hill admitted that the pathway itself was an obvious dangerous condition and for other subsequent reasons, the court ruled that the employer was not held liable for negligence.

In cases where the dangers are unknown to the owner, it is unlikely that the owner will be held liable. In *Bacon v. Dixie Bronze Co., Inc* 475 So.2d 1177 employee of independent contractor sustained injuries while modifying a building owned by Dixie. The site of the injury had been in use for years, giving Dixie no reason to be concerned and therefore no reason to inspect the channel beams involved in the injury. Turner also testified that he himself was "not aware of any allegedly defective conditions existing in the roof of the building." The court determined "...no evidence had been presented to establish that owner knew or in exercise of reasonable diligence should have known of defective condition of beam and either taken steps to eliminate defects or warned independent contractor or its employees of the same." Therefore, Dixie had no reason inspect the channel beam involved in the accident.



If performed with exercise of reasonable care, skill, and diligence, dangers are not considered intrinsically or inherently dangerous. In the case of Bacon and Tuggle, the injuries were sustained because the work was not performed with reasonable care. In *Bacon v. Dixie* the court determined “owner of building did have a nondelegable duty to provide employees of independent contractor who were working on roof of building with safe place to work, where work being performed by employees in removing section of roof from building would not have been intrinsically or inherently dangerous if it had been performed with exercise of reasonable care, skill, and diligence.”

Where the owner does not make the independent contractor and their employees aware of dangers in an “extraordinary situation”, the owner can be held liable for injuries sustained by independent contractor’s employees. In *Crawford Johnson & Co v. Duffner*, 279 Ala. 678, plaintiff-employee brought a negligence claim for injuries sustained due to a defect in the boiler. The court found “The owner of premise is not responsible to an independent contractor for injury from defects or dangers which the contractor knows of, or ought to know of. But if the defect or danger is hidden and known to the owner, and neither known to the contractor, nor such as he ought to know, it is the duty of the owner to warn the contractor, and if he not do this he is liable for resultant injury.” The court found the owner of the premise, Crawford Johnson & Co., to be responsible for the injuries sustained by the employee of the independent contractor due to the fact that there was only one power switch for gas and water, when generally there was two. There was no way for Duffner’s employee to have known that this was the case.

## **§ 6 Inspection Undertaken by Employer**

Generally, it is not the duty of the employer to conduct an inspection, but if an employee is injured as a result of an inspection that was conducted negligently, then the employer may be held liable for the injuries. In *Pate v. U.S. Steel Corp.*, 393 So. 2d 992 (Ala. 1981), the Court stated that the “...owner could not be held liable on ground that it was negligent in its failure to inspect for safety in the first instance” (*Pate*). The court reasoned this because, in *Pate*, the plaintiffs were attempting to recover under the theory that U.S. Steel Corp failed to inspect the premises. However, the USS manual included the right, not duty, to inspect the premises and the purpose of the inspection was to ensure that Foster was completing its duties as established under the contract, not to control the manner in which the work was completed. The Court herein did not identify a duty on part of U.S. Steel Corp. to conduct safety inspections. The Court concluded that, “without an undertaking to inspect, no duty arises.” Therefore, the employer does not generally have the duty to inspect, but, if the employer undertakes an inspection, a duty to not conduct negligently arises.

In *Pate v. U.S. Steel Corp.*, Pate alleged that U.S. Steel Corp. performed an inspection of the work site negligently. The Court did not receive any evidence proving that the alleged safety

inspection occurred. However, Plaintiffs later admitted that no such safety inspection in fact took place. Even then, in order to recover on this theory in the instance that an inspection did occur, the Court declared that Pate “must prove that the defendant had (1) undertaken to inspect the construction site, particularly the area in which the injury-causing hazard is located, (2) performed such inspection negligently, and (3) that such negligence was the proximate cause of his injuries” (*Pate v. U.S. Steel Corp.*, 393 So. 2d 992 (Ala. 1981)). Thus, it is not enough to claim that the inspection was done negligently, Pate and Carvey had to also prove other elements in order for the employer to be held negligent for their injuries.

### III. Florida

#### **§ 7 General Rule**

In Florida, if an independent contractor (or their estate) brings suit against employer of independent contractor for injuries sustained within scope of employment, then employer is generally not negligent if the work was considered inherently dangerous or if the employee of the independent contractor is deemed an invitee by the court and the danger was known or obvious to them. There are, however, a few cases in which this general rule would not apply. If the employer of the independent contractor commits a specific act of negligence, actively participates in or exercises direct control over the work/worksite, or had a duty to warn independent contractor's employee of a hazard or danger then the employer opens themselves up to liability for the injuries. Further, if the employee of the independent contractor is deemed, by the court, as a third party member of the public or as an invitee who was injured as a result of a condition that the employer of the independent contractor could/should have anticipated would cause injury, then employer can be found negligent.

#### **§ 8 Employee of Independent Contractor Acting Within the Scope of Employment**

*In Florida Power and Light Co. v. Price*, 170 So.2d 293 (Fla.1964) the estate of Gerald W. Price, employee of independent contractor (Harlan Electric) brought a negligence suit against Florida Power and Light for injuries sustained when a fellow employee allowed a jumper wire to come close enough to cause an electrical arc which energized the wire on which Price was working. Price was acting in the scope of employment, since he was doing the electrical work Harlan was contracted to do. The Supreme Court of Florida held employer, Florida Power and Light, not negligent and reasoned that employers are absolved of liability for injuries to the employee of an independent contractor by a dangerous instrumentality owned by the defendant or in the course of performance of the inherently dangerous work absent negligence on the part of the contracting owner. In *Price*, the Court also reasoned that the independent contractor exception to the doctrines of dangerous instrumentalities and inherently dangerous work does not

apply to third party members of the general public because they are not embraced in the relationship created by the independent contract.

According to *Price*, where the injury caused by the dangerous instrumentality and/or inherently dangerous work is sustained by a third party member of the public, the employer maintains its affirmative nondelegable duty of care. In *Baxley v. Dixie Land and Timber Co.*, the Florida First District Court of Appeal considered whether or not this third party member of the public exception might extend to employees of an independent contractor where the employee sustained the injury while not technically in the scope of employment. The Florida First District Court of Appeal, citing, *Channel v. Musselman Steel Fabricators*, 224 So.2d 320 (Fla.1969) determined that since Baxley was injured while collecting payment after having already completed his subcontracted portion of the work, there does not appear to be a reasonable relationship between Baxley's subcontracted work itself and the injury he sustained. The court reasoned that the injured plaintiff, where not engaged in performing such work as he/she is contracted to do at the time he/she is injured, takes on the status of third party member of the public. Applying the the holding in *Price* that the employer retains its affirmative nondelegable duty to third party members of the public, the court held that if the trial court could reasonably find Baxley was not acting in the scope of his employment and therefore was a third party member of the public, Dixie could be found negligent under the doctrine of inherently dangerous work. Hence, the injury to the employee of an independent contractor must occur within the scope of employment for the employer to not be found negligent.

### **§ 9 Independent Contractor Hired for Work That is Dangerous**

In *Florida Power and Light Co. v. Price*, Price alleged negligence on the part of Florida Power and Light in the injuries he sustained on the grounds Florida Power and Light was liable under the doctrines of dangerous instrumentalities and inherently dangerous work. Florida's doctrine of dangerous instrumentalities is a common law doctrine providing the owner of a dangerous tool is liable for injuries caused by that tool's operation. The doctrine of inherently dangerous work places an affirmative duty on employers to provide a safe workplace where the work contracted is inherently dangerous.

In *Scofi v. McKeon*, 666 F.2d 170 (1982), Charles Scofi, an employee of Howdeshell Plumbing, Inc., who was contracted with McKeon Construction Co. to do plumbing work, sustained injuries that turned out to be fatal from a cave-in of a trench he was laying pipe in at the construction site. Scofi's estate brought a negligence suit against McKeon, alleging McKeon had an affirmative duty to Howdeshell's employees since the work it was contracted to do was inherently dangerous. Scofi's claim relied on Restatement (Second) of Torts § 413, which states "one who employs an independent contractor to do work which the employer should recognize as likely to create, during its progress, a peculiar unreasonable risk of physical harm to others

unless special precautions are taken, is subject to liability for physical harm caused to them by the absence of such precautions...”

In *Baxley v. Dixie Land and Timber Co.*, Baxley’s estate alleged logging is inherently dangerous work, so Dixie owed an affirmative non-delegable duty of care to Baxley. If the work is considered dangerous under the doctrines of dangerous instrumentalities and/or inherently dangerous work, the holdings of *Price*, *Scofi*, and *Baxley* apply as precedent.

Case law differs for work that is not inherently dangerous but has potentially dangerous conditions. In *TIMCO Aviation Services v. Strickland*, where Joye Painting Services, the contracted company, was hired to pressure wash the roof of a airplane hangar and repair skylights on the roof 66 So.3d 1002 (2011). During the course of his work, Strickland stepped on a skylight and fell five stories down. Strickland brought suit against TIMCO asserting that the skylights were a dangerous condition because of their appearance and condition and that they were difficult to locate even without the pressure wash solution. TIMCO cited *Morales v. Weil* in which an employee was “injured by one of the incidental hazards which made the job dangerous” *Morales v. Weil* 44 So.3d 173 (Fla. 4th DCA 2010). In that case the court cited *Johnson v. Boca Raton Community Hospital* which stated that “‘landowner is under no duty to protect an employee of an independent contractor from the very hazard created by the doing of the contract work’ because landowner ‘may assume that the worker, or his superiors, are possessed of sufficient skill to recognize the degree of danger involved and to adjust their methods of work accordingly’” *Johnson v. Boca Raton Comty. Hosp., Inc.*, 985 So.2d 593, 596–97 (Fla. 4th DCA 2008). When applied to the case of *TIMCO v. Strickland*, the court found that, because Joye Painting was hired to perform maintenance work and repair the skylights, falling through then was an obvious dangerous condition and “recognized risk attendant”. Joye Painting and Strickland should have located the skylights prior to beginning work and therefore TIMCO was not found negligent for the condition of the skylights. When the work is not considered inherently dangerous but rather has a dangerous condition, the holding of *Strickland* would apply as precedent.

### **§ 10 Duty Owed to Employee of Independent Contractor/Invitee**

There are three classifications for a visitor on private property– a licensee, trespasser, or invitee– and the duty of care owed by the landlord differs based on the classification *Post v. Lunney*, 261 So.2d 146, 147 (Fla. 1972). According to *Wood v. Camp*, “an invitee is a visitor on the premises by invitation, either express or reasonably implied, of the owner” *Wood v. Camp*, 284 So.2d 691, 695 (Fla. 1973). As stated in *TIMCO v. Strickland*, employees of independent contractors are deemed as business invitees if they are injured while trying to access the premises to perform the work they were contracted for rather than during the course of the work 66 So.3d 1002 (2011).

A landowner must maintain the premises in a reasonably safe condition for an invitee *Regency Lake Apartments Assocs. v. French*, 590 So.2d 970, 973 (Fla. 1st DCA 1991). Should the court deem the employee of an independent contractor an invitee, then generally the employer of the independent contractor is not liable for physical harm. To prove that the premises were maintained in a reasonably safe condition, the dangerous activity or condition on the land which resulted in the physical harm to the invitee, must be known or obvious to the invitee (section 343A of the *Restatement*).

In *Ahl v. Stone Southwest*, Brown and Root was contracted by Stone Southwest to perform maintenance work 666 So.2d 922 (1995). George Ahl, who worked for Brown and Root, brought suit against Stone Southwest after slipping while trying to access the premises for the contracted work. The court, in this case, determined that Stone Southwest upheld the duty of care that was required of it in regards to maintaining the premises in a reasonably safe condition for an invitee. Because Ahl had seen the solution, asked about it, and was wearing special soled shoes to preventing slipping in the solution, the condition was considered obvious. Stone Southwest was therefore not obligated to warn of the danger created by the solution. Therefore, should an independent contractor's employee be classified as an invitee, the duty of care is limited to maintaining the premises in a reasonably safe condition if the dangerous condition is obvious and known to the independent contractor's employees.

However, the obviousness of the condition does not absolve the employer of independent contractor of all liability. According to section 343A of *Restatement*, the owner could still be found liable if "the possessor should anticipate the harm despite such knowledge or obviousness." In the case of *Ahl v. Stone Southwest*, the court reversed and remanded the decision of the lower court because Stone Southwest should have anticipated that an employee working in the mill could have been injured even if Ahl was aware of the obvious condition. Therefore, if the injured plaintiff-employee is deemed by the court an invitee then there is a possible exception whereby the employer could be found negligent.

### **§ 11 Employer of Independent Contractor Commits Specific Act of Negligence**

A landowner is generally not liable for the injuries to an independent contractor during the course of their work *Hewett v. Travelers Ins. Co.*, 538 So.2d 952, 953 (Fla. 1st DCA 1989). The exceptions to this rule are if the owner "actively participates and controls the manner in which the work is performed, or if the owner performs one or more specific acts of negligence" *City of Miami v. Perez*, 509 So.2d at 345-46; *Van Ness v. Independent Constr. Co.*, 392 So.2d 1017, 1019 (Fla. 5th DCA). If an employer commits a specific act of negligence, the owner opens itself up to liability for the independent contractor's employees. Specific acts of negligence include "negligently creating or negligently approving the dangerous condition

resulting in the injury ... to the contractor's employee” *City of Miami v. Perez*, 509 So.2d 343, 346 (Fla. 3d DCA 1987).

In *Ahl v. Stone Southwest*, Stone Southwest took it upon themselves to clean the machinery before the independent contractor, Brown and Root, began the work it was hired for. The District Court of Appeals of Florida reversed and remanded the decision of the lower court, leaving the lower court to determine whether or not the act of leaving water and oil on the floor constitutes a specific act of negligence. If the lower court finds that Stone Southwest left water and oil on the floor knowing that Brown and Root’s employees would be working in and around it then Stone Southwest could be found negligent. Thus, whether or not the employer of an independent contractor commits a specific act of negligence is a salient fact in determining the employer’s liability for injuries to the independent contractor’s employees.

In *Florida Power and Light Co. v. Price*, the Florida Supreme Court gleaned from a pattern of holdings by lower courts an exception to employers being liable for injuries under the doctrines of inherently dangerous work and dangerous instrumentalities. The Court held there is an “independent contractor exception,” whereby an employer may not be found negligent for injuries to employees of its independent contractor, where the claims of liability flow from the doctrines of dangerous instrumentalities and/or inherently dangerous work, unless the injured party can show there was a specific act of negligence on the part of the employer. In the specific case of *Price*, the Court found Florida Power and Light not negligent since Price was unable to prove a specific act of negligence on the part of Florida Power and Light. The court held that where the plaintiff is an employee of the independent contractor, there must be an “allegation or showing of an act of negligence or omission of duty or proper care” on the part of the employer of the independent contractor; a showing that the employer “in some way contributed or concurred in the act of negligence”; or a showing that the contracting owner “by positive act of negligence or negligent omission” caused injury to the independent contractor or the employee. The court also made clear that at the very least, the plaintiff-employee must make detailed allegations of negligence, with general allegations being insufficient.

In *Scofi v. McKeon*, the court found McKeon not negligent for the fatal injuries sustained by Scofi while laying pipe in the trench that caved in. The court applied the holding in *Price*, reasoning that the independent contractor exception applied in this case because Mrs. Scofi’s allegations of negligence were very general, with her amended complaint containing only one pertinent paragraph regarding McKeon’s negligence causing the trench to cave-in. The court held that this was not satisfactory according to the standards laid out by the court in *Price* for showing the employer was negligent.

## § 12 Employer of Independent Contractor's Control of Worksite

The second exception to the rule that a landowner is generally not liable for the injuries sustained by the independent contractor's employees if "the property owner actively participates in or exercises direct control over the work" *Strickland*. While some actions by the employer are considered involvement, not all acts fall within this scope. In *Ahl v. Stone Southwest*, the court deemed that Stone Southwest's involvement by cleaning the machinery before the independent contractor began work, constituted active participation. On the other hand, in *TIMCO v. Strickland*, where the employer (TIMCO) conducted a safety inspection and provided a man lift and safety harness to Strickland, TIMCO was deemed to have not participated in or exercised control over the worksite. While an inspection does not constitute active participation in or direct control of the work, negligent active participation in work such as cleaning machinery does.

## § 13 Employer of Independent Contractor's Duty to Warn of Danger/Hazard

Generally, property owner is not liable for negligence with regards to dangers that should have been known to the independent contractor or could've been discovered through due care as established in *Florida Power and Light Co v Robinson* 68 So.2d 406, 411 (Fla.1953).

One example of a condition that is considered obvious to the contractor is exemplified in *TIMCO v. Strickland*. In the case of *Strickland*, the employee of the independent contractor, Strickland, asserted that the appearance of the skylights (nearly the same color as the roof) and the condition of the skylights (could not withstand 200 pounds) were dangerous and that TIMCO did not inform them of the danger. However, because Joye Painting, the independent contractor, was hired to perform work on the skylights, the court determined that TIMCO was under no obligation to warn of the danger posed by the skylights. The court held that locating the skylights and being aware of their condition "an integral part of the work that Joye Painting was hired to perform". If the injuries to the independent contractor's employees were as a result of a dangerous condition that the employee should have known about or discovered during the course of the work they were hired for, the employer of the independent contractor is not negligent for the injuries.

In another case, *Holsworth v. Florida Power and Light Company*, the employer of the independent contractor, Florida Power and Light, was unaware of the dangerous condition and therefore could not have warned the independent contractor of it 700 So.2d 705 (1997). In that case, Mack Holsworth, an employee of Shaw Insulation Company, was injured while climbing down a ladder from the roof in an attempt to close the hatch. In the court's reasoning, the court cited *Moze v. Champion Int'l Corp* in which it was determined that to deem an owner liable, you must show that the dangerous condition was latent (defined in *Kagan v. Eisenstadt* "not apparent by use of one's ordinary senses from a casual observation of the premises) 98 So.2d 370, 371 (Fla. 3d DCA 1957) *Moze v. Champion Int'l Corp.*, 554 So.2d 596, 598 (Fla. 1st DCA

1989). The court determined that, because Holsworth accompanied the inspector and had used the hatch at least 20 times before, the dangerous condition was not latent and instead was obvious. Further, evidence showed that Florida Power and Light was unaware that the hatch condition was dangerous. No other employees had complained about it and the Florida Power and Light representative did not report any danger to the company either. It was therefore concluded that even if the defect was latent, Florida Power and Light could not be held liable as the condition of the roof hatch was not withheld from Shaw.

### **Research References**

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