

Texas Supreme Court Clarifies Scope of Property Owners' Statutory Protections

Update

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The Texas Supreme Court's recent decision in *Los Compadres Pescadores, L.L.C. v. Valdez* provides new guidance regarding a commercial property owner's protections against liability for injuries occurring on construction sites. Chapter 95 of the Texas Civil Practice and Remedies Code limits a commercial property owner's liability for injuries to a contractor's or subcontractor's employees. Under the statute, owners are liable for such injuries only if they "exercise[] or retain[] some control over the manner in which the work is performed" and have actual knowledge of the danger or condition that injures the employee. Tex. Civ. Prac. & Rem. Code Ann. § 95.003. But for that limitation to apply, the employee's injuries must "arise[] from the condition or use of an improvement to real property where the contractor or subcontractor constructs, repairs, renovates, or modifies the improvement." *Id.* § 95.002. Several years ago, the Texas Supreme Court clarified that the employee's injuries must result "from a condition or use of the *same improvement* on which the contractor (or its employee) is working when the injury occurs."

Building on its prior decision, the Texas Supreme Court's March 26, 2021, decision in *Los Compadres Pescadores* holds that the injury must arise from a dangerous condition of the *specific improvement* the employee is working on—not just a hazard present in the workplace, generally. The Texas Supreme Court's decision in *Los Compadres Pescadores* held that Chapter 95 covered claims by a contractor's employees who were injured by an energized power line while constructing pilings for a condominium building. The employees were installing a twenty-foot rebar when the rebar's top end contacted a live power line. The resulting electrical shock injured the employees. The Texas Supreme Court held these injuries "ar[ose] from the condition ... of an improvement to real property," bringing them within Chapter 95's scope, because the power

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line's proximity to the pilings created a probability of harm to the employees tasked with constructing those pilings.

The Texas Supreme Court explained that identifying the "improvement" is the first step under Chapter 95. The Court opined that an improvement—defined as "any addition to real property, other than fixtures, that can be removed without causing injury to the real property"—can be as broad as a completed building or as narrow as pilings within the building's foundation. Given this broad definition, the Court considered what the employees were hired to do—here, to construct only the pilings—as evidence of the relevant "improvement." The Court rejected the property owner's contention that the overall "workplace" was the "improvement," as that would impermissibly bring all workplace hazards within Chapter 95's scope. Indeed, a "workplace" cannot be an "improvement" because it "is not 'an addition to real property.'"

The Texas Supreme Court next provided guidance on what constitutes a "condition" of an improvement. A condition must "affect the 'state of being'" of the identified improvement to qualify under Chapter 95. Items that hang over real property, like power lines, can meet this standard if they are near the improvement. Thus "[i]f a dangerous condition, by reason of its proximity to an improvement, creates a probability of harm to one who 'constructs, repairs, renovates, or modifies' the improvement in an ordinary manner, it constitutes a condition of the improvement itself."

Despite the Court's ultimate conclusion that Chapter 95 applied on these facts, the *Los Compadres Pescadores* decision establishes important limits on the statute's scope. The Texas Supreme Court's interpretation of "condition ... of an improvement" to eliminate claims based on generalized workplace or premises injuries, and to require a proximal connection between the hazard and the improvement on which the work was performed, will narrow the universe of cases that fall within the scope of Chapter 95's protections. Commercial property owners in Texas should be aware of these limitations when defending themselves against negligence claims. They should also be aware that under *Los Compadres Pescadores*, even if Chapter 95 applies to an employee's injury claim, the employee's failure to secure a jury finding on the owner's actual knowledge of the dangerous condition will not preclude a finding of liability.

Full text of the Supreme Court's opinion is available [here](#).