Affirmatively Repairing a Jury Instruction

The issue centers on the Privette doctrine established by a 1993 Supreme Court opinion holding that a property owner is not liable when an employee of a contractor hired by the owner is injured doing that work. The main reasons are, as Cuéllar explained in Sandoval, “first, that independent contractors, by definition, ordinarily control the manner of their own work; and second, that hirers typically hire independent contractors precisely for their greater ability to perform the contracted work safely and successfully.”

There are a couple of exceptions, including one set out in a case called Hooker that permits liability when the property owner “retains control over any part of the work and actually exercises that control so as to affirmatively contribute to the worker’s injury,” Cuéllar wrote.

In this case, plaintiff José Sandoval received third-degree burns over a third of his body as he was helping test and evaluate 900-pound circuit breakers that control electrical power to Qualcomm’s major San Diego campus. A jury awarded him $7 million, and the appellate court affirmed.

The jury reached that decision because the pattern CACI instruction it received omitted a crucial factor required by Hooker. The instruction “doesn’t say anything about affirmative contribution,” said Norris’s partner Jason R. Litt. “And so that’s allowed the plaintiffs in these cases to argue something that they really shouldn’t be able to argue.”

But the committee has not yet had the opportunity to tackle the problematic instruction.

“Every defense lawyer worth their salt should be citing this case if [the issue] comes up,” Litt said. “The court made pretty clear at the end of the opinion that the instruction, as it’s written, is wrong.”

- DON DEBENEDEITIS