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CALIFORNIA SUPREME COURT REINFORCES STRONG PRESUMPTION AGAINST LIABILITY FOR COMPANIES HIRING INDEPENDENT CONTRACTORS BASED ON INJURIES TO CONTRACT WORKERS

To Our Clients and Friends:

On September 9, the Supreme Court of California issued its ruling in *Sandoval v. Qualcomm Inc.*, No. S252796, ___ Cal.5th ___. The decision is the latest in a line of cases reinforcing the strong presumption under California law that a person who hires an independent contractor delegates to the contractor all responsibility for the safety of contract workers.

In *Sandoval*, a contract worker hired by Qualcomm to examine electrical equipment on its campus was severely injured. He sued Qualcomm for negligence and premises liability under the theory that Qualcomm should have implemented more precautions that would have protected him from injuring himself on a live circuit. A jury found Qualcomm liable for negligently exercising control over the worksite, and the Court of Appeal affirmed the judgment.

In a unanimous opinion by Justice Cuéllar, the California Supreme Court reversed and remanded with instructions to enter judgment for Qualcomm. The Court explained that because contractors are generally hired based on their expertise and independence, there is a strong presumption that all responsibility for ensuring the safety of contract workers rests with contractors, not the hirer. And although there are exceptions to that general rule when the hirer fails to disclose a concealed hazard to the contractor or retains control over the contractor's work and affirmatively contributes to the worker's injury, neither of those narrow exceptions applied to this case.

I. The Court Narrowly Construes the *Hooker* Retained-Control Exception to the Presumption That Hirers Are Not Liable for Injuries to Contract Workers

California law recognizes a presumption that a hirer of an independent contractor delegates to the contractor all responsibility for injuries to contract workers. That rule is grounded in the principles that hirers typically do not control the work of contractors and that contractors have a greater ability to perform contracted work safely and, if necessary, can build the cost of safety measures into the contract.

There are two exceptions to this general rule. The first, not at issue in *Sandoval*, applies when the hirer owns or operates the property on which work occurs and fails to disclose a concealed hazard to the contractor and its workers. The second, which was at issue in *Sandoval*, is the "*Hooker*" or "retained control" exception. It permits hirer liability "if the hirer retains control over any part of the work and actually exercises that control so as to affirmatively contribute to the worker's injury." *See id.* at

[p. 12]. The Court has been reluctant to add to these two exceptions; in *Gonzalez v. Mathis* (Aug. 19, 2021) No. S247677, ___ Cal.5th ___, decided last month, the Court declined to recognize a third exception that would have held hirers liable for injuries to contract workers from known hazards on the premises that could not be avoided through reasonable precautions.

Sandoval addresses "the meaning of *Hooker*'s three key concepts: retained control, actual exercise, and affirmative contribution." *Sandoval*, *supra*, at [p. 17].

Retained control. For *Hooker* to apply, the hirer must "retain[] a sufficient degree of authority over the manner of performance of the work entrusted to the contractor." *Id.* The hirer must "sufficiently limit the contractor's freedom to perform the contracted work in the contractor's own manner." *Id.* at [p. 18]. And that interference with the contractor's work must be meaningful: A hirer can exercise a "broad general power of supervision and control"—including by maintaining a right to inspect, stop work, make recommendations, or prescribe alterations—without "retaining control" over the contracted work. *Id.* at [pp. 18–19]. Under that framework, the Court concluded that "Qualcomm did not retain control over the inspection merely by declining to shut down [all] circuits" or failing to let the contractor do so. *Id.* at [p. 27].

Actual exercise. A hirer "actually exercises" retained control if it involves itself to such an extent that the contractor "is not entirely free to do the work in [its] own manner." *Id.* at [p. 20] (citation omitted). This analysis requires a finding that the hirer "exert[ed] some influence over the manner in which the contracted work is performed," either through "direction, participation, or induced reliance." *Id.* Notably, however, the Court made clear that "actual exercise" does not require active participation by the hirer—*Sandoval* approvingly cited a decision applying the *Hooker* exception to a hirer that had merely "contractually prohibited" a contractor from undertaking certain safety measures. *See id.* at [p. 21 n.6]. With respect to Sandoval's case, the Court concluded that Qualcomm did not "actually exercise" any retained control because the contractor "remained entirely free to implement (or not) any . . . precautions in its own manner," a decision "over which Qualcomm exerted no influence." *Id.* at [p. 28].

Affirmative contribution. Finally, "affirmative contribution" requires that the hirer's exercise of retained control "contribute[] to the injury in a way that isn't merely derivative of the contractor's contribution." *Id.* at [p. 21]. The hirer must, in other words, "induce[]" the injury rather than merely "fail[] to prevent" it. *Id.* The Court also corrected two misconceptions in decisions applying *Hooker*. First, it clarified that both "affirmative" acts *and* failures to act can support liability—the relevant question is "the relationship between the hirer's conduct and the contractor's conduct" and whether "the hirer's exercise of retained control contributes to the injury independently of the contractor's contribution (if any)." *Id.* at [pp. 22–23]. Second, the affirmative-contribution requirement is distinct from substantial-factor causation; negligent hiring, for instance, may be a substantial factor in a contract worker's injury, but it does not *affirmatively contribute* to that injury because it derives from the contractor's negligence. *Id.* at [p. 23]. Applying this analysis to Sandoval's case, the Court held that even if Qualcomm had exercised some form of retained authority by leaving protective covers over live circuits, those actions did not "affirmatively contribute" to the contractor's injuries—that conduct, the Court explained, had no role in the contractor's decision to open the protective cover. *Id.* at [p. 29].

II. Implications of the Court's Decision

Gonzalez and *Sandoval* both demonstrate that the California Supreme Court is committed to preserving the presumption that hirers aren't liable for injuries to contract workers and will not lightly expand or broadly construe exceptions to that general rule. *Gonzalez* rejected a plaintiff's effort to add a new exception, and *Sandoval* reinforces the narrowness of the existing exceptions. By clarifying that hirers must actually exercise any retained authority and affirmatively contribute to a contract worker's injury before facing liability under *Hooker*, *Sandoval* sends a strong signal to businesses that they can hire independent contractors, set general guidelines, and maintain some supervisory authority over the contractors' work without exposing themselves to potential liability.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the California Supreme Court, or in state or federal appellate courts in California. Please feel free to contact the following lawyers in California, or any member of the Appellate and Constitutional Law Practice Group.

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