

A Win for Jobsite Owners Involving Onsite Construction Personal Injury Lawsuits:
California Supreme Court Holds That A Jobsite Owner Cannot Be Liable For An Injury
To An Employee Of An Independent Contractor Where The Owner Did Not Both Retain
Control Over Some Part Of The Contractor's Work And Did Not Exercise That Control
In A Manner That Affirmatively Contributed To The Worker's Injury

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As many are aware, the California Supreme Court has embraced the legal theory that a hirer of an independent contractor bears no liability for injuries caused by the negligence of the worker's employer. Privette v. Superior Court (1993) 5 Cal.4th 689, 693. A major dispute has occurred as to whether a jobsite owner may still be liable if it retains control of the work site and is negligent in doing so. In that vein, legal counsel for injured workers have argued that, where the jobsite owner retains control over the contractor's work and actually exercises that control in a way that affirmatively contributes to the worker's injury, there would still be liability. Hooker v. Department of Transportation (2002) 27 Cal.4th 189.

In an important, recent decision, the California Supreme Court ruled in Sandoval v. Qualcomm, Inc. (2021) Westlaw 4097782 ("Sandoval case") that where a jobsite owner did not both retain control over some part of the contractor's work and actually exercised that control in a manner that affirmatively contributed to the injury, that there would be no liability. The Court also ruled that a pattern jury instruction on the "retained control exception" failed to adequately instruct juries on the necessary elements of such a claim.

The Sandoval case involved a serious accident site injury case brought against Qualcomm, Inc. ("Qualcomm") by Plaintiff Martin Sandoval, a parts specialist working for an independent contractor of Qualcomm. Qualcomm powers its San Diego campus from two sources of electricity – the local utility and Qualcomm's onsite turbine generators. Qualcomm had planned to upgrade its onsite turbine generators and, in order to accommodate that upgrade, hired TransPower Testing, Inc. ("TransPower"), an electrical engineering service company, to inspect and verify the amperage capacity of Qualcomm's existing switchgear equipment. During one of the inspections, TransPower employee Sandoval, and others, attended a safety briefing led by a Qualcomm plant manager. Qualcomm employees then performed what was referred to as a power down process. Sandoval later suffered serious injuries due to a 4,168 V arc flash which set him aflame (he ended up spending a month in a hospital with third degree burns). At trial, Qualcomm then objected to CACI 1009B, a pattern jury instruction, and at trial contested any liability. Sandoval prevailed at trial and was awarded over \$1 million in past and

future medical expenses and \$6 million in noneconomic damages. The Trial Court denied a Request for a New Trial and the Court of Appeal affirmed.

However, before the California Supreme Court, the Court ruled that the jobsite owner, Qualcomm, did not both retain control over some part of the contractor's work and actually exercise that control, even though it had numerous workers onsite at the time and had led a safety meeting. The Court went on to hold that there could not be liability imposed on the jobsite owner because of that. The Court also acknowledged that the CACI 1009B was in tension with its ruling and also held that the instruction did not accurately reflect California law. Quoting the Court:

Whether the hirer “retained control over safety conditions at the worksite” (CACI No. 1009B) does not properly capture whether the hirer retained control over the manner of performance of some part of the work entrusted to the contractor. Whether the hirer “negligently exercised [its] retained control over safety conditions” does not properly capture whether the hirer actually exercised its retained control. And whether the hirer’s “negligent exercise of [its] retained control over safety conditions was a substantial factor in causing [plaintiff]’s harm” does not properly capture whether the hirer’s exercise of retained control affirmatively contributed to the plaintiff’s injury. The Judicial Council and its Advisory Committee on Civil Jury Instructions should update this instruction with suitable language consistent with this opinion.

The Sandoval case is an important decision in that it demonstrates that, for a jobsite owner to be liable, it must both retain actual control over some part of a contractor's work, actually exercise that control and affirmatively contribute to the accident. Being on site, leading safety meetings and performing other work at the time of the accident will not suffice to prove the type of control required in order to impose legal liability.

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