

## Who Pays for a Sub's Negligence?

by Quenda Behler Story

I preach endlessly about job-site safety and the importance of regular safety inspections. For me it's more than just a legal issue: I will never forget the day my husband, a contractor — now retired — fell off a multi-pitched roof. He bounced twice, then fell through a tree on his way to the ground — all because he believed harnesses were too much trouble and only for wimps. He wasn't killed or even (amazingly enough) seriously injured, but that certainly wasn't his fault.

That's not the only reason I preach about safety, though. Here's another: People getting hurt on the job site can cost you, the general contractor, a whole bunch of money.

Let's look at an example. In one recent lawsuit, the employee of a painting sub fell through a hole left by another sub (we'll call him a framing sub) who was no longer on the job. The injured painter then sued the framing sub for negligence. The judge dismissed the case against the framer, saying in effect that it didn't

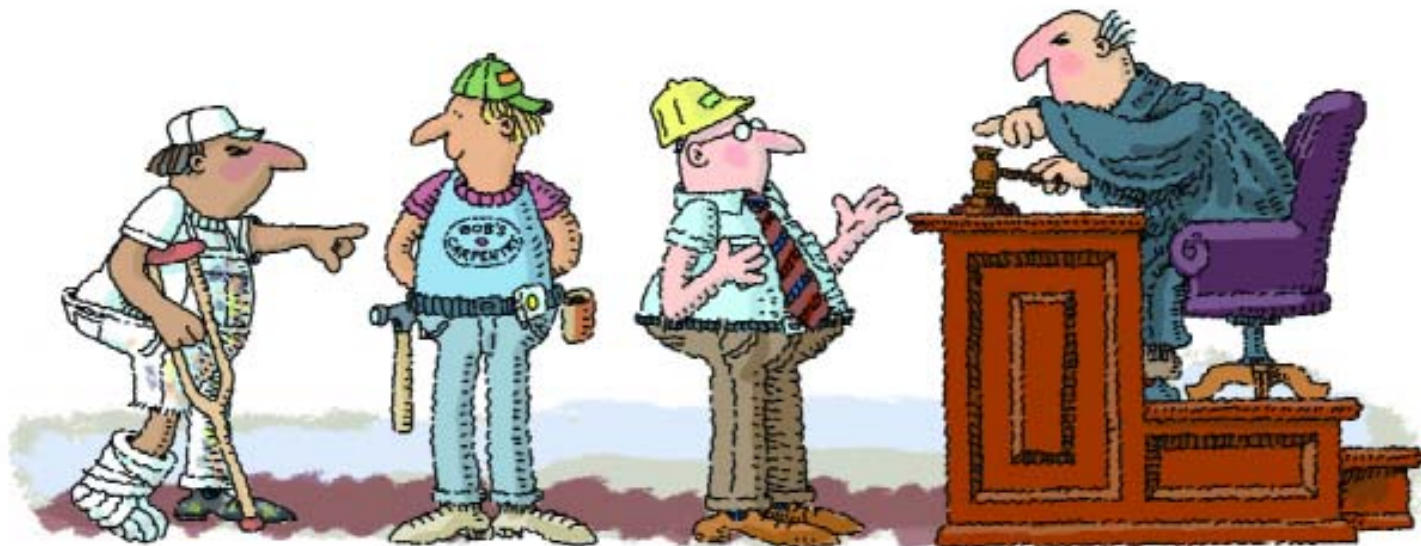
matter what idiot cut the hole and then walked off and left it open without a barricade. What mattered was that the framer had finished, and the job site was under the control of the contractor. Once the framer was gone, it was up to the GC to inspect the site and fix any dangerous conditions.

So the injured painter couldn't sue the framing sub for negligence, but he could sue the general contractor.

### Sole Control

Got that? It didn't matter that the general contractor had not created the problem and wasn't even on site when the hole was cut. Although the framer had created the dangerous condition, it was the GC who was legally negligent, because he had sole control of the job site when the injury occurred.

So will the contractor be the only one who has to pay, or can he get some help paying the claim from the framer? According to this particular judge's opinion,



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once the framing contractor turned the job over to the GC, and the GC accepted it, the framer was absolved from all responsibility. It was the GC's job to make sure no one on the job site was negligent.

## Workers' Comp

One further note: That the injured painter collected workers' compensation — which he did — does not affect the contractor's liability for the accident. I mention this because I can hear all you contractors who use subs asking how, if the injured guy collected workers' comp from his employer, he could then turn around and sue the GC for negligence. Hasn't he already been paid for his injury?

Well, yes, but workers' comp has nothing to do with this issue — except in one respect: An injured employee who's covered by workers' comp usually can't sue his own employer for negligence. If one

of the framers had fallen through that hole, all he could have gotten from his employer was workers' comp — though he (the injured framer) could have sued the contractor. The GC cannot use the injured party's collection of workers' comp as a defense.

Of course, what happens in court can vary from state to state according to local laws, and slightly different facts cause different outcomes. Still, there is one rule you can count on: If you're the GC, you're the one in control and it's your job to prevent safety screw-ups. That means that you need a plan in place for keeping the site safe — and regular inspections need to be a part of that plan. Because any accidents that happen are your problem, not somebody else's.

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*Quenda Behler Story has practiced and taught law for more than 25 years.*