

Ruckman v. AG-Wise Enterprises 117 Cal.App.5th 571 (2025 DJDAR 11856)

A hirer of an independent contractor may be liable to an innocent bystander for injuries caused by the contractor's negligence simply by retaining control over the contractor's work, if the hirer's exercise of its retained control was a substantial factor in causing the bystander's injury.

FACTS/PROCEDURAL HISTORY

Gloria Ruckman, her 17-day-old son Robert, Gloria's mother, and other individuals (Plaintiffs) were severely injured, and one person was killed when an agricultural deep-ripping operation using a 180,000 pound bulldozer struck an underground gas pipeline, causing a catastrophic explosion. The explosion caused the Ruckmans' house to catch on fire. The injured parties included innocent third-party bystanders and employees of the contractor performing the work.

Plaintiffs filed suit against Defendant Ag-Wise Enterprises, Inc., Big N Deep (BND), PG&E, Wildwood, and others for general negligence, premises liability, and strict liability. Ag-Wise had hired BND, an independent contractor to excavate a Kern County property to prepare it for almond trees. Ag-Wise and BND had a verbal agreement but did not execute a written contract before BND started the work. Wildwood was the owner of the property and contracted with Ag-Wise to manage the property. Evidence showed that Ag-Wise met multiple times with BND to plan the work and regularly visited the site to ensure that the work was in compliance with Ag-Wise's requirements. PG&E owned an underground high-pressure 34-inch gas transmission line that ran through the property where the excavation work was to be performed. BND obtained an underground service alert permit which expired eight days prior to the explosion.

At trial, Plaintiffs alleged that Ag-Wise retained control over aspects of BND's work and safety conditions, particularly regarding the location and risks associated with the underground gas pipeline. The special form provided to the jury asked: "Did Ag-Wise Enterprises, Inc. retain control over any part of the work to be done by Big N Deep?" The jury found that Ag-Wise retained control, failed to exercise it with reasonable care, and was a substantial factor in causing plaintiffs' injuries. The jury awarded plaintiffs \$73 million in noneconomic damages. Ag-Wise appealed arguing that the jury instruction lacked evidentiary support and misstated the law.

HOLDING/DISCUSSION

The Court of Appeal affirmed the judgment in favor of Plaintiffs. The main issue was whether Ag-Wise as the hirer of independent contractor, BND, owed a duty of care to the injured bystanders for BND's negligence. Generally, a person who hires an independent contractor is not liable to third parties for injuries caused by the contractor's negligence in performing the work. (*Privette v. Superior Court* (1993) 5 Cal.4th 689, 693.) Because the hirer presumably delegates to the independent contractor the authority to determine the manner in which the work is to be performed, the contractor also assumes the responsibility to ensure that the work is performed safely. (*Gonzalez v. Mathis* (2021) 12 Cal.5th 29, 41.)

However, the court applied the retained control exception established in *Hooker v. Department of Transportation* (2002) 27 Cal.4th 198, which provides that a hirer may be liable where it retains control over the contracted work and exercises that control in such a way that affirmatively contributes to the injury. (*Id.* at p. 210.) Mere retention of control is insufficient; instead there must be evidence that the hirer's actions, directions,

or omission contributed to the dangerous condition. (*Ruckman v. Ag-Wise Enterprises, Inc.* (2025) 117 Cal.App.5th 571, 590-593.)

Here, the court found sufficient evidence that Ag-Wise retained and exercised control over aspects of BND's work related to the underground gas pipeline. Ag-Wise directed the manner and sequence of BND's work (leaving a wide buffer zone around the pipeline and not operating over the pipeline at night), specified the direction and depth of the excavation despite knowing the pipeline risks, controlled how the equipment crossed the pipeline, and monitored compliance almost daily. This evidence reasonably allowed a jury to find that BND was not free to perform the work on its own, satisfying the retained-control standard.

Ag-Wise argued that the retained control doctrine applies only to an independent contractor's employee. However, this argument was rejected by the court. The court decided that the doctrine also extends to innocent bystanders, explaining that the policy considerations underlying *Privette*, such as the workers' compensation system, do not apply to third parties. The injured person has no other certain remedy, the immediate employer is not immune from civil liability, and the hirer, if held liable, is presumably entitled to equitable indemnity from the immediate employer. "Holding both hirer and employer liable presumably provides both with a powerful incentive to act with due care towards neighbors, bystanders, and visitors to the site." (*Id.* at p. 592.)

The court held that while an independent contractor's employee must show that the hirer negligently exercised retained control in a way that affirmatively contributed to the employee's injury, an innocent bystander need not show the hirer affirmatively contributed to their injury. Instead, the hirer may be liable to an innocent bystander simply by retaining control over the independent contractor's work, and as matter of common law negligence, it would be enough that the exercise of retained control was a substantial factor in causing the bystander's injury. (*Id.* at p. 593.)

Finally, the court found that the jury instructions were proper for omitting any requirement that Ag-Wise's conduct affirmatively contribute to the injury – a requirement only applicable to the contractor-employee plaintiffs under *Hooker* and *Sandoval*. Thus, the court concluded that Ag-Wise could be held directly liable for conduct that resulted in injuries to innocent bystander plaintiffs and affirmed the judgment.

Rule: An innocent bystander asserting a negligence claim against the hirer under the retained control exception must show: (1) the hirer retained control over any part of the contractor's work (duty); (2) the hirer failed to exercise that control with reasonable care (breach); and (3) the hirer's negligence was a substantial factor in causing the bystander's injury (causation). (*Ruckman v. Ag-Wise Enterprises, Inc.* (2025) 117 Cal.App.5th 571, 593.)