



# ***CONTRACTUAL RISK TRANSFER***

## **THIRD-PARTY-OVER ACTIONS**

Presented by

**Timothy L. Pierce**  
**Partner**  
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**CRT**

Although the content changes yearly, this seminar is consistently one of our most popular sessions. The day begins with an in-depth look at additional insured issues, including case law on the scope of coverage provided under the standard endorsements and "other insurance" conflicts that can negate the intent of the risk transfer if not handled appropriately. Recent developments in third-party-over action litigation will be reviewed, including how the CGL policy responds to such claims. The afternoon will be devoted to learning how to analyze contracts for risk exposures and negotiate changes that will keep the risks assumed in line with the contractor's insurance coverage. Starting with a basic "how to" discussion, learn how to help your clients assess their contractual risks and evaluate the adequacy of their insurance program in protecting the contractor against these risks.

***Monday, November 13, 9:00 a.m.–5:00 p.m.***

[Ours]

[Theirs]



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The Advantage of Partnership

**Timothy L. Pierce**  
**Partner**  
**Thelen Reid and Priest LLP**

Mr. Pierce is one of the presenters for Monday's all-day seminar, "Contractual Risk Transfer," and is also one of the presenters for Workshop N, "E-Commerce in Insurance and Construction," on Thursday. A partner in the Los Angeles office of Thelen Reid & Priest LLP, he is a member of the firm's Construction and Government Contracts practice group and his practice focuses on the construction industry. Mr. Pierce also represents insureds in insurance coverage disputes and in addressing risk management issues in the construction industry. He writes and speaks regularly on risk management issues in the construction industry.

Mr. Pierce graduated from Virginia Tech with a bachelor of science and a master of science in mechanical engineering and was employed as a manufacturing engineer with Hewlett Packard before attending law school. He received his J.D. degree from the University of Santa Clara. Mr. Pierce is a member of the American Bar Association and the Fiscal, Insurance, and Risk Management and Legal Advisory committees of the Associated General Contractors of California.

## ***Notes***

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.

# ***THIRD-PARTY-OVER ACTIONS***

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*Timothy L. Pierce*  
*Thelen Reid and Priest LLP*

## **A. Third-Party-Over Actions**

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2. Examples
3. Legal theories behind such claims—generally premised on the Peculiar Risk Doctrine
4. Statutory treatment in certain jurisdictions
5. Judicial restrictions on TPO actions in California and other jurisdictions
6. Liability for negligent hiring—A new theory for plaintiffs?

## **B. Transferring the Risk**

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2. Risk transfer through additional insured endorsements
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  - b. Type of endorsements
  - c. Not all policies are created equal—some specifically exclude coverage for injuries to workers
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# THIRD-PARTY-OVER ACTIONS

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## A. Third Party Over Actions

### 1. What Are They?

A third party over (“TPO”) action result when an injured worker sues a party other than his or her employer and that defendant then seeks contractual indemnity from the worker’s employer. In most states workers compensation laws, bar workers from suing their employers in excess of their statutory benefits. Although these laws preclude suits against the employer, they do not preclude suits against other parties. These laws create a “loophole” through which construction workers can sue the owner, general contractor, or higher-tiered subcontractors in addition to receiving their worker’s compensation benefits.

States generally extend immunity in cases involving workers compensation as follows:

- (a) Immunity extends to employer alone. Arkansas, Missouri, Maryland, and Vermont.
- (b) Immunity extends to employer and co-employees. Vast majority of states grant immunity to employers and co-employees. At least twenty three states, recognize exceptions for intentional torts.
- (c) Officers and directors of corporate employer. Courts are split on the issue of whether an employee who received benefits from the employer corporation may separately sue the officers or directors of that corporation.
- (d) “Common Enterprise” immunity. A few states deem all employers and

co-employees on a construction project part of a “common enterprise,” and thus extend workers compensation immunity to all parties involved. Florida takes this approach.

Minnesota’s “common enterprise” approach to workers compensation immunity is based on the election of remedies doctrine. On a construction project, if a general contractor causes injury to a subcontractor’s employee, the employee can either seek benefits from the subcontractor or the general contractor.<sup>1</sup>

### 2. Legal Theories Behind Such Claims— Generally Premised On The Peculiar Risk Doctrine

The peculiar risk doctrine, is based on general principles of law in the Restatement (Second) of Torts.

Section 413 imposes “direct liability” on the third party as follows:

**§ 413.** Duty to Provide for Taking of Precautions Against Dangers Involved in Work Entrusted to Contractor

One who employs an independent contractor to do work which the employer should recognize as likely to create, during its progress, a peculiar unreasonable risk of physical harm to others unless special precautions are taken, is subject to liability for physical harm caused to them by the absence of such precautions if the employer

- (a) fails to provide in the contract that the contractor shall take such precautions, or

<sup>1</sup>See Table “Peculiar Risk Doctrine.”

- (b) fails to exercise reasonable care to provide in some other manner for the taking of such precautions.

Sections 416 and 427 impose “vicarious liability” on the third party employers as follows:

**§ 416. Work Dangerous in Absence of Special Precautions**

One who employs an independent contractor to do work which the employer should recognize as likely to create during its progress a peculiar risk of physical harm to others unless special precautions are taken, is subject to liability for physical harm caused to them by the failure of the contractor to exercise reasonable care to take such precautions, even though the employer has provided for such precautions in the contract or otherwise.

**§ 427. Negligence as to Danger Inherent in the Work**

One who employs an independent contractor to do work involving a special danger to others which the employer knows or has reason to know to be inherent in or normal to the work, or which he contemplates or has reason to contemplate when making the contract, is subject to liability for physical harm caused to such others by the contractor’s failure to take reasonable precautions against such danger.

The illustrations throughout the relevant sections of the Restatement portray the injured party as a pedestrian, bystander, driver, or passerby and not a worker.

**3. Statutory Treatment in Certain Jurisdictions**

Some states have enacted legislation to bar third party over actions. Several states deem the general contractor the employer of all the workers, including employees of subcontractors, on any particular project. The general contractor in these states is required to provide worker’s compensation insurance for all the workers. In these states, the worker’s compensation benefits are the workers’ “exclusive remedy.”

States that have these “exclusive remedy” statutes include: Colorado, Connecticut, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nevada, New Mexico, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Vermont, and Virginia. Oregon’s statute prohibits the injured worker from recovering against both the employer and any person who, on account of the same injuries, has a right to contribution or indemnity against the employer.<sup>2</sup>

**4. Judicial Restrictions on TPO actions in California and other Jurisdictions**

**A. California**

In 1962, the California Supreme Court extended the benefit of the peculiar risk doctrine to employees of independent contractors. (*See Woolen v. Aerojet General Corp.* (1962) 57 Cal. 2d 407.) In 1993, the California Supreme Court reversed the decision in *Woolen*, holding that the peculiar risk doctrine was not available to the workers of a contractor performing inherently dangerous work. (*See Privette v. Superior Court* (1993) 5 Cal. 4th 689.) In *Privette*, the court denied the injured worker’s claim against the property owner. The court based its holding on the following:

- A “nonnegligent” party should not be required to incur greater liability than the negligent independent contractor who was responsible for the accident.
- Workers compensation benefits serve the purpose of the peculiar risk doctrine to assure recovery by injured parties.
- Application of the peculiar risk doctrine to employees of independent contractors essentially exempts a single class of employees from the exclusive remedy limitations of workers compensation.

<sup>2</sup>See Table “Peculiar Risk Doctrine.”

- Imposing vicarious liability on the person that hires a specialized independent contractor would encourage such persons to perform inherently dangerous work with their own less-skilled workers.
- The right to equitable indemnity that allows the hiring party to shift responsibility for injuries back to the hiring contractor is not available for injuries sustained on the job.

Restrictions on TPO actions was further extended in *Toland v. Sunland Housing Group, Inc.* (1998) 10 Cal. 4th 253, 258 [74 Cal.Rptr. 2d 898]. Here the injured worker attempted to hold the general contractor liable for failing to instruct the employer subcontractor to take special precautions. The court held that the plaintiff could not hold the third party directly liable under section 413. The court rejected the notion of an exception to *Privette* that would hold a hiring person with “superior knowledge” of special risks liable under the peculiar risk doctrine. The court reasoned that this exception would “eviscerate” the holding that employees cannot recover under section 413.

After *Privette* and *Toland*, plaintiffs resorted to other theories such as the following theories raised in *Voigts v. Brutoco Engineering & Construction Co., Inc.* (1996) [927 P.2d 1173, 59 Cal.Rptr.2d 669]:

- The prime contractor has a “nondelegable” duty to maintain a safe workplace.
- The prime contractor contractually retains control over the work by the subcontractor and is therefore still responsible for injuries arising out of the subcontractor’s work.
- The prime contractor negligently hired the subcontractor.
- The prime contractor, through its general knowledge of the job site,

knew or should have known of the dangerous condition created by the subcontractor that caused the worker’s injuries.

Liability under the second *Voights* theory was denied in *Zamudio v. City and County of San Francisco* (1999) 70 Cal.App.4th 445. Here the court found that there was no actual control over the work by the owner. The court relied upon a contract provision stating: owner “... shall not supervise, direct, or have control over, or be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction or for the safety precautions incident thereto ... .” The court’s analysis hinged on section 414 of the Restatement (Second) of Torts:

“§ 414. Negligence in Exercising Control Retained by Employer

One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care.”

While this cause of action remains an option after *Privette*, and *Toland*, the court did not find the requisite control in this case.

B. Other Jurisdictions<sup>3</sup>

At least 17 other jurisdictions have decisions barring peculiar risk claims in construction cases:

Alaska	Missouri
Arkansas	Nebraska
Connecticut	Nevada
Idaho	New York
Kansas	Ohio
Kentucky	Utah
Maryland	Washington
Massachusetts	Wisconsin
Minnesota	Wyoming

<sup>3</sup>See Table “Peculiar Risk Doctrine.”

## 5. Liability for Negligent Hiring—A New Theory For Plaintiffs?

### A. California

One avenue that still remains open to plaintiffs is a cause of action for negligent hiring. This theory comes from section 411 of the Restatement (Second) of Torts:

#### § 411 Negligence in Selection of Contractor

An employer is subject to liability for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor

- (a) to do work which will involve a risk of physical harm unless it is skillfully and carefully done, or
- (b) to perform any duty which the employer owes to third persons.

Again, the illustrations to section 411 all involve an injured third party other than an employee.

The negligent hiring theory was recently upheld by a California Court of Appeals in *Camargo v. Tjaarda Dairy* (2000) 79 Cal.App.4th 1088. However, the California Supreme Court decided to review this case potentially indicating that it will continue to restrict TPO claims in California.

### B. Other Jurisdictions<sup>4</sup>

Although the Restatement declined to express any opinion as to the duty to hire a “financially responsible” independent contractor, a Federal Court of Appeals has interpreted this duty as a component of New Jersey law. (*See Becker v. Interstate Properties* (1977) 569 F.2d 1203.) In *Becker*, the court held a shopping center

developer liable for negligence in selecting a contractor with inadequate insurance. An injured worker was therefore able to pursue a claim against the developer under a negligent hiring theory.

While even the New Jersey state courts were reluctant to accept negligent hiring based on financial *responsibility* (*See Cassano v. Aschoff* (Super.Ct.N.J. 1988) 543 A.2d 973), at least one state has recognized the validity of a negligent hiring cause of action based on other factors in construction cases. (*See Wasson v. Stracener* (Ct.App.Tx. 1990) 786 S.W.2d 414 [holding a hirer of an independent contractor liable for negligent selection of a contractor with a bad driving record who injured a worker in a car accident]; see also *Gomien v. Wear-Ever Aluminum* (1971) 50 Ill.2d 19 [276 N.E.2d 336] [holding the hiring company liable for the negligent selection of an independent contractor in failing to determine that the contractor had a poor driving record].)

### B. Transferring the Risk

**Risk Assumption**—As a general proposition, responsibility for worker injuries should be assumed by the party in the best position to guard against injury. In most instances this is the employer. The risk of worker injuries is transferred to the employer’s insurer with additional insured endorsements and to the employer itself with indemnity agreements.

#### 1. Additional Insured Endorsements

Additional insured endorsements add other parties as insureds under a CGL policy, but coverage is limited to liability arising out of the named insured’s work for the additional insureds. This condition is generally not an issue for TPO actions since the injured worker is working for the named insured.

Obtaining the actual endorsement is important for two reasons. First, it is part of the policy and proves that coverage exists. Also, the endorsement defines the parameters of the addi-

<sup>4</sup>See Table “Peculiar Risk Doctrine.”

tional insured coverage. Endorsements can use ISO form, manuscript or blanket language.

Not all policies are created equally. Although the standard ISO policy provides coverage for worker injuries, there are other policies on the street that provide discounted premiums and exclude liability arising from worker injuries. General contractors must devise a means to manage all the insurance documents at the start of the job to assure adequate coverage from all subcontractors.

General Contract and Subcontracts should:

Require AI coverage and specify the endorsement required.

Specify criteria for the insurer, limits and type of policy form or coverage required (i.e. no exclusions for worker injuries)

Require copy of endorsement be provided at the start of the project.

Require the additional insured coverage be primary to all coverage maintained by the additional insured.

Require named insured to assume all defense and indemnity obligations if policy has level of self-insurance.

Although insurance companies will assume defense of additional insureds more readily today, one must still be persistent to obtain the benefits to which they are entitled.

**C. Indemnity Agreements**

If additional insured coverage is not available, then indemnity clauses are the next best thing. However, indemnity clauses do not provide the broad defense benefits of an insurance policy and indemnitors are more inclined to deny a tender of defense since there is no potential for bad faith liability and the defense obligation may be ignored in the ultimate settlement.

**1. Purpose of Indemnity Agreements**

Also known as “hold harmless agreements,” their purpose is to contractually shift liability from one party to another. A contract of insurance is a specialized form of an agreement for indemnity.

**2. Different Forms of Indemnity Agreements and their Application to Third Party Over Actions**

- Complete indemnification even when the indemnitor is without fault and the indemnitee is solely at fault.
- Complete indemnification when the indemnitor is partly at fault for any reason.
- Complete indemnification for acts in which the indemnitor is partly at fault in an “active” manner.
- Indemnification for only the indemnitor’s negligence

Many states have enacted some form of anti-indemnification statutes. These statutes fall into four general categories:

1) Statutes Which Bar Indemnification for Unlawful Acts:

- |               |          |
|---------------|----------|
| Massachusetts | Montana  |
| Nevada        | Oklahoma |

2) Statutes Which Bar Indemnification for “Sole” Negligence:

- |                |               |
|----------------|---------------|
| Arizona        | South Dakota  |
| Connecticut    | Tennessee     |
| Georgia        | Utah          |
| Idaho          | Washington    |
| Maryland       | Virginia      |
| Michigan       | West Virginia |
| South Carolina |               |

Statutes Which Bar Indemnification for "Sole Negligence or Willful Misconduct:"

Alaska            Hawaii  
California        Indiana

3) Statutes Which Bar Indemnification for Negligence:

Colorado        Mississippi  
Illinois         Ohio  
Louisiana       Rhode Island  
Minnesota

4) Statutes Which Bar Indemnification of Design Professionals which break-down further as follows:

(a) Agreements indemnifying design professionals for their "sole" negligence are void:

Arizona            New Jersey

(b) Agreements indemnifying against an indemnitee's "sole" negligence are void:

Delaware        New Mexico  
New Hampshire

(c) Indemnity agreements when damages "arise out of" a design professional's activities are void:

California       South Dakota  
Pennsylvania

(d) Agreements when damages are based on a "defect" are void:

New York

(e) Agreements indemnifying against both a design professional's "defects" in specifications and drawings and "negligence" in inspection are void:

Texas

# PECULIAR RISK DOCTRINE IN CONSTRUCTION

STATE	RULE	CASES	HOLDING	STATUTES
Alabama	Workers' comp. is the exclusive remedy, with exceptions.	<i>Wiggins v. Risk Enter. Management Ltd.</i> , 14 F. Supp. 2d 1279 (N.D. Ala. 1998).  <i>Powell v. U.S. Fidelity &amp; Guar. Co.</i> , 646 S.O.2d 637 (Ala. 1994).	Outrage (intentional infliction of emotional distress) is not barred by the exclusivity provisions of workers' compensation statute)  Exclusivity provisions do not preclude a cause of action for failure to provide a safe work place where breach of this duty is willful or intentional	Ala. Code 1975 §§25-5-11, 25-552, 25-553
Alaska	Peculiar Risk Doctrine not available.	<i>Morris v. City of Soldona</i> , 553 P.2d 474 (Alaska 1976)	Principal does not owe independent contractor's employee a duty under negligent hiring or peculiar risk theories.	
Arizona	Peculiar Risk Doctrine not available.	<i>Cordova v. Parrett</i> , 703 P.2d 1228 (Ariz. App. 1985)	Peculiar risk doctrine is not applicable to injuries suffered by employees of the independent contractor	
Arkansas	Workers' comp. is the exclusive remedy with exceptions.	<i>Jackson v. Petit Jean Elec. Co.</i> , 606 S.W.2d (Ark. 1980)  <i>Angle v. Alexander</i> , 945 S.W.2d 933 (Ark. 1997)	Even intentional conduct fell within exclusivity provision of Workers' Compensation Act	A.C.A. §11-9-105.
California	Peculiar Risk Doctrine not available.	<i>Privette v. Superior Court</i> , 5 Cal. 4th 689 (1993)  <i>Toland v. Sunland Hous. Group, Inc.</i> , 18 Cal. 4th 253 (1988)  <i>Voigts v. Drutoco Eng'g &amp; Const. Co., Inc.</i> , 927 P.2d 1173 (Cal. App. 1996), re-view dismissed (1998)  <i>Zamudio v. City and County of San Francisco</i> , 70 Cal. App. 4th 445 (1999)	Person hiring independent contractor is not vicariously liable under peculiar risk doctrine. Rejects §416 of the Restatement.  General contractor was not directly liable for its failure to instruct subcontractor. Rejects §413 of the Restatement.  Principal not liable to contractor's employee for failing to intervene to correct a condition created by the contractor  Principal not liable where there was no actual control over the subcontractor. The facts of this case did not satisfy the control requirement of §414 of the Restatement.	

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STATE	RULE	CASES	HOLDING	STATUTES
Colorado	Workers' comp. is the "exclusive remedy."	<i>Thorndury v. Alan</i> , 991 P.2d 335 (Colo. App. 1999)	Landowner not liable to contractor's employee if contractor is insured	C.R.S.A. §8-40-101 and C.S.R.S.A. §8-41-402
Connecticut	Workers' comp. is the "exclusive remedy."	<i>Ray v. Schneider</i> , 548 A.2d 461 (Conn. App. 1988)	Owners of construction project not liable to contractor's employee for negligent hiring and personal injury suit against contractor was barred by exclusivity provisions of Workers' Compensation Act.	C.G.S.A. §31-275 and C.G.S.A. §31-284a
Delaware	Workers' comp. is the exclusive remedy with exceptions.	<i>Rafferty v. Hartman Walsh Painting Co.</i> , 2000 WL 967449 (Del. Supr. 2000)	Because of exclusivity provision in Delaware Workers' Compensation Act, court action may only be maintained against employer if there is an allegation of intention to injure employee	19 Del. C. §2304
District of Columbia	Peculiar Risk Doctrine is available.	<i>Traudt v. Potomac Elec. Power Co.</i> , 692 A.2d 1326 (D.C. 1997)	Electric utility owed employee of asbestos abatement contractor duty under peculiar risk doctrine to provide that contractor shall take required precautions	D.C. Code 1981 §36-228(a)
Florida	Workers' comp. is the "exclusive remedy."	<i>Ramos v. Univision Holdings, Inc.</i> , 655 So.2d 89 (Fla. 1995)	Owner must be contractor or statutory employer in order to be entitled to workers' compensation immunity	F.S.A. §440.11
Georgia	Workers' comp. is the "exclusive remedy."	<i>Worden v. Hoar Const. Co.</i> , 507 S.E.2d 428 (Ga. 1998)	Employee of subcontractor could not bring tort action against general contractor who was liable to pay workers' compensation benefits as statutory employer	O.C.G.A. §34-9-11
Hawaii	Workers' comp. is the exclusive remedy with exceptions.	<i>Makaaneole v. Gampon</i> , 777 P.2d 1183 (Ha. 1989)	Premise owner was not the statutory employer of contractor's employee and was liable under the peculiar risk doctrine	H.R.S. §386-5 and 386-73
Idaho	Peculiar Risk Doctrine not available.	<i>Peone v. Regulus Stud Mills, Inc.</i> , 744 P.2d. 102 (Idaho 1987)	Owner of timber right was not liable for injuries suffered by employee of logging contractor, as logging contractor was in better position to reduce risk of injury	I.C. §72-209 and 72-301, I.C. §72-211 (exclusive remedy provision)
Illinois	No vicarious liability under Peculiar Risk Doctrine.	<i>Kotecki v. Cyclops Welding Corp.</i> , 146 Ill.2d 155, 166 (1991)	Owner's liability for contribution may not exceed the workers' compensation benefits it paid to the plaintiff	Ill. Rev. Stat. 1991, Ch. 48, ¶138.11 (exclusive remedy provision)

STATE	RULE	CASES	HOLDING	STATUTES
Indiana	Workers' Comp. is the "exclusive remedy."	<i>Acre v. Westinghouse Elec. Corp.</i> , 637 N.E.2d 1271 (Ind. 1994)	Exclusive remedy provision does not apply to intentional torts of employer	Indiana Code 22-3-2-6 (exclusive remedy provision)
Iowa	No vicarious liability under Peculiar Risk Doctrine.	<i>Robinson v. Poured Walls of Iowa, Inc.</i> , 553 N.W.2d 873 (Iowa 1996)	General contractor was not liable to employee of subcontractor because general contractor did not have sufficient control over land, and the work did not involve peculiar risk of inherent danger	Iowa Code §§85.3(1) and 85.20 (1993)
Kansas	Workers' Comp. is the "exclusive remedy."	<i>Dillard v. Strecker</i> , 877 P.2d 371 (Kan. 1984)	Landowner had neither direct nor vicarious liability to injured worker under inherently dangerous activity doctrine	K.S.A. 44-501(b)
Kentucky	Workers' Comp. is the "exclusive remedy."	<i>King v. Shelby Rural Electric</i> , 502 S.W.2d 659 (Ky. 1973)  <i>USF&amp;G v. Technical Minerals, Inc.</i> , 934 S.W.2d 266 (Ky. 1996)	Exclusive remedy provision barred subcontractor's tort action against contractor	KRS §342.610 and KRS §342.690
Louisiana	Workers' Comp. is the "exclusive remedy."	<i>Martin v. Stone Container Corp.</i> , 729 So.2d 726 (La. App. 1999)	Exclusive remedy provision precluded employee from suing employer under dual capacity theory	LSA-R.S. 23:1032
Maine	Uncertain as to adoption of Restatement Section 416.	<i>Legassie v. The Bangor Pub. Co.</i> , 741 A.2d 442 (N.E. 1999)	Supreme Court does not explicitly adopt Restatement Section 416, but no facts presented in this case to support 416 claim	
Maryland	Peculiar Risk Doctrine not available for vicarious liability.	<i>Rowley v. City of Baltimore</i> , 505 A.2d 494 (Md. 1986)	City had duty to maintain property in a reasonably safe condition but City was not liable for injuries suffered by contractor's employee	
Massachusetts	Peculiar Risk Doctrine not available for vicarious liability.	<i>Vententes v. Barletta Co.</i> , 466 N.E.2d 500 (Mass. 1984)	General contractor's liability for acts of a subcontractor employed to do inherently dangerous work does not extend to employees of another subcontractor.	
Michigan	Principle may be liable to contractor's employees under Doctrine of Retained Control.	<i>Candelaria v. BC General Contractors, Inc.</i> , 600 N.W.2d 348 (Mich.App. 1999)	Contractor not liable for the death of subcontractor's employee in this case under Doctrine of Retained Control	

STATE	RULE	CASES	HOLDING	STATUTES
Minnesota	Election of remedies allows recovery under workers' compensation OR suit, but not both.	<i>Conover v. Northern States Power</i> , 313 N.W.2d 397 (Minn. 1981)  <i>O'Malley v. Ulland Brothers</i> , 529 N.W.2d 735 (Minn.App. 1995)	Owner not vicariously liable for injuries of independent contractor's employee  If third party and employer are engaged in common enterprise, injured employee may proceed against employer for workers' compensation benefits or against third party for damages but not against both	M.S.A Section 176.061
Mississippi	Workers' Compensation is the exclusive remedy.	<i>Jones v. James Reeves Contractor's Inc.</i> , 701 S.O.2d 774 (Miss. 1997)	Lessee of construction site had breached no duty to the deceased worker and project architects had no duty to warn deceased worker of dangerous soil conditions.	Code 1972, Sections 11-7-13, 71-3-1, et seq., 71-3-9, 71-3-25
Missouri	Workers' Compensation is the exclusive remedy.	<i>Vatterott v. Hammerts Ironworks, Inc.</i> , 968 S.W.2d 120 (Mo. 1998)  <i>Matteuzzi v. Columbus Partnership, L.P.</i> , 866 S.W.2d 128 (Mo. 1993)	Exclusive remedy provision precludes negligence action against principle against statutory employer by statutory employee  Owners did not exercise substantial control over construction site to make owners liable for injuries to contractor's employees	V.A.M.S. Section 287.040
Montana	Peculiar Risk Doctrine is available.	<i>Beckman v. Butte-Silver Bow County</i> , 1 P.3d 348 (Mont. 2000)	An employer is vicarious liable for injuries to others caused by a subcontractor's failure to take precautions to reduce unreasonable risks associated with inherently dangerous activity	
Nebraska	Peculiar Risk Doctrine is available.	<i>Parrish v. Omaha Public Power Dist.</i> , 496 N.W.2d 902 (Neb. 1993)	Owner and general contractor may be liable to employee of subcontractor	
Nevada	Workers' Compensation is the exclusive remedy.	<i>Tucker v. Action Equipment &amp; Scaffold Co., Inc.</i> , 951 P.2d 1027 (Nev. 1997)	Subcontractor was immune from suit by employee in the same employ.  Sierra Pacific holding duty of employer to take precautions against peculiar risk is not applicable because employee of independent contractor is not included in the term, "harm to others"	N.R.S. 616 B. 603; N.R.S. 616 C. 215

STATE	RULE	CASES	HOLDING	STATUTES
New Hampshire	Peculiar Risk Doctrine available.	<i>Elliott v. Public Service Co. of New Hampshire</i> , 517 A.2d 1185 (N.H. 1986)	Employee of independent contractor could maintain cause of action against company for injury suffered in the course of performing inherently dangerous work.	
New Jersey	Peculiar Risk Doctrine is available.	<i>Mavrikidis v. Petullo</i> , 707 A.2d 977 (N.J. 1998)	Owner not liable on negligent hiring theory and contractor's work was not inherently dangerous	
New Mexico	Works' Compensation is the exclusive remedy against all statutory employers.	<i>Harger v. Structural Services, Inc.</i> , 916 P.2d 1324 (N.M. 1996)	Statutory employers liable for payment of benefits of workers' compensation benefits to employees of contractors are immune from tort liability under exclusivity provisions	N.M.S.A. Section 52-1-6(e) (1992)
New York	Peculiar Risk Doctrine not available.	<i>Whittaker v. Norman</i> , 551 N.E.2d 579 (N.Y. 1989)	Land owners do not have a nondelegable duty and are not liable even where there is an inherently dangerous activity	Labor Law Sections 402 and 435
North Carolina	Peculiar Risk Doctrine is available.	<i>Woodson v. Rowland</i> , 408 S.2d 222 (N.C. 1991)	No election of remedies required between worker's compensation claim and civil action but there may only be one recovery	G.S. Sections 97-9, 97-10.1
North Dakota	Peculiar Risk Doctrine not available.	<i>Fleck v. Ang Coal Gasification Co.</i> , 522 N.W.2d 445 (N.D. 1994)	Operator of plant not vicariously liable fore injury of independent contractor's employee. Operation did not retain control sufficient to give rise to duty	N.D.C.C. Section 65-01-01; Section 65-01-08
Ohio	Peculiar Risk Doctrine not available.	<i>Curlless v. Laythorpe Co.</i> , 583 N.E.2d 1367 (Ohio Ct.App.1989)	Owner not liable for subcontractor's employee's injuries. Workers' Compensation is the exclusive remedy	
Oklahoma	Worker's Compensation is the exclusive remedy .			85 O.S. 1991 Section 3
Oregon	Injured worker may not recover from both employer and one who has right to contribution for indemnity against employer.	<i>Martelli v. R.A. Chambers &amp; Associates</i> , 800 P.2d 766 (Or. 1990).	General Contractor was not employer of subcontractor's injured employee and therefore was not protected by exclusivity provisions of workers' compensation law.	O.R.S. 656.029 and 626.556; O.R.S. 656.005(14) (1985)
Pennsylvania	Workers' compensation is the exclusive remedy.	<i>Emery v. Leavesly McCollum</i> , 725 A.2d 807 (Pa. Super 1999)	Owner did not retain sufficient control over the work and premises therefore not liable for subcontractor's employee's injuries. In general was immune from suit under workers' compensation law	77 P.S. Section 52

STATE	RULE	CASES	HOLDING	STATUTES
South Carolina	Workers' Compensation is the exclusive remedy.	<i>Freeman Mechanical Inc. v. J.W. Bateson Co., Inc.</i> 447 S.E.2d 197 (S.C. 1994)	Prime contractor is liable for workers' compensation where subcontractor's employee is injured on the job	Code 1976, Section 42-1-410
South Dakota	Workers' Compensation is the exclusive remedy.	<i>Clausen v. Aberdeen Grain Inspection, Inc.</i> , 594 N.W.2d 718 (S.D. 1999)	Owner of work site could not be held liable for independent contractor's death.	
Tennessee	Workers' Compensation is the exclusive remedy.			Tenn. Code Ann. Section 50-6-106 (1991) and Supp. 1994)
Texas	Peculiar Risk Doctrine is available.	<i>Clayton W. Williams, Jr., Inc. v. Olivo</i> , 952 S.W.2d 523 (Tex. 1997)	General contractor has duty to inspect premises and warn invitee of dangerous conditions which general contractor knows or should know	
Utah	Peculiar Risk Doctrine not available.	<i>Thompson v. Jess</i> , 979 P.2d 322 (Utah 1999)	Contractor's employee could not recover from land owner under peculiar risk doctrine	
Vermont	Workers' Compensation is the exclusive remedy.			21 V.S.A. Section 618
Virginia	Workers' Compensation is the exclusive remedy.	<i>Mizenko v. Electric Motor and Contracting, Co., Inc.</i> , 419 S.E.2d 637 (Va. 1992)	Exclusivity provision barred claim against contractor	Code Va. Code Section 65.2-821
Washington	Peculiar Risk Doctrine not available.	<i>Tausher v. Puget Sound Power &amp; Light Co.</i> , 635 P. 2d 426 (Wash. 1981)	Public utilities liability did not extend to employees of independent contractors merely because of presence of inherently dangerous activities	R.C.W.A. 19.29.010 and 80.28.010
West Virginia	Workers' Compensation is the exclusive remedy with exceptions.	<i>Helmick v. Potomac Edison Co.</i> , 406 S.E.2d 700 (W.Va. 1991)	Subcontractor's employee could not recover from electrical utility absent intent to injury	Code Section 23-4-2(c)
Wisconsin	Third parties not vicariously liable under Peculiar Risk Doctrine.	<i>Bauernfeind v. Zell</i> , 528 N.W.2d 1 (Wis. 1995)	Subcontractor's employee's claim was barred by exclusive remedy rule	W.S.A. 102.3(2)
Wyoming	Peculiar Risk Doctrine not available.	<i>Jones v. Chevron U.S.A. Inc.</i> , 718 P.2d 890 (Wyo. 1986)	Oil company could not be held vicariously liable to employee's of independent contractor for any negligence of independent contractor	