Principal's Liability for Workmen's Compensation to Employees

Wex S. Malone
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In the absence of some special provision in the Workmen's Compensation Act it would be possible for an employer to avoid his compensation responsibility merely by interposing an independent contractor or sub-contractor between himself and his employees. This, of course, would not deprive the employee of protection so long as the intermediary contractor is solvent or protected by insurance. However, the possibility of using an impecunious middle man as a means of dodging compensation remains, and it was necessary to prevent this by subjecting certain principals to the compensation claims of their contractors' employees. A provision of this type is found in most compensation acts,1 and the principal who is affected thereby is commonly known as a statutory employer. Section Six of the Louisiana Act sets forth the obligations of such a principal.2

* Professor of Law, Louisiana State University.


In Arizona the principal is liable for compensation to the employees of an independent contractor engaged in work which is part of the employer's trade if the principal retains supervision or control. Ariz. Code Ann. (1939) § 56-928.

In the absence of a provision subjecting the principal to the compensation claims of the contractor's employees, the liability of the principal depends upon his right to control the claimant's work. In other words, the claimant must establish that he was in effect a sub-employee of defendant at the time of injury. Niemann v. Iowa Electric Co., 218 Iowa 127, 253 N.W. 815 (1934); Manock v. Amos D. Bridge's Sons, Inc., 86 N.H. 104, 164 Atl. 211 (1933). Cf. Blasdel v. Industrial Commission, 65 Ariz. 373, 181 P.(2d) 620 (1947).

2. La. Act 20 of 1914, § 6, as amended:

"Where any person (in this section referred to as principal) undertakes to execute any work, which is a part of his trade, business or occupation or which he had contracted to perform, and contracts with any person (in this section referred to as contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any employee employed in the
All the provisions of Section Six make clear the fact that the sole purpose of this section is to prevent the evasion of compensation as suggested above.\textsuperscript{3} As between the principal and the contractor, it is fair that the latter, as the employer of the claimant, should bear the risk of accident. For this reason, the principal who is made liable under Section Six is entitled to indemnity and he can interplead the contractor and demand judgment over against him.\textsuperscript{4} The net effect is that the principal merely lends his solvency to the worker's claim, and he can effectively protect himself in advance either by satisfying himself that the contractor is solvent or by insisting that the latter insure against work accidents.

\textsuperscript{3} A survey of the corresponding provisions of the compensation acts of other states makes this clear beyond doubt:

- Arkansas: Ark. Act 319 of 1939, § 6;
- Idaho: Idaho Code Ann. (1932) § 43-1611;
- Indiana: Ind. Stat. Ann. (Burns, 1940) § 40-1214;
- New York: Workmen's Compensation Law (1913) § 56;

\textsuperscript{4} Discussed at p. 42, infra.
The purpose of Section Six as a means of preventing the evasion of compensation is again made clear by the fact that it comes into operation only when the work let by contract is a part of the regular business of the principal. Normally the worker must be satisfied to accept the financial status of his immediate employer. It is neither expedient in policy nor workable from an administrative viewpoint to require that all persons who in any way accept the services of a contractor must lay themselves open to suit by the latter's employees. Thus a principal is not fairly subject to suspicion of seeking to avoid his compensation liability unless he has attempted to relegate a part of his own regular operations to a contractor.

Who Is a Principal?

The language of Section Six indicates that a principal is any person who undertakes to carry out any work which is a part of his trade, business or occupation, by means of a contract with another; or any person who has contracted to perform work and sub-lets any portion to another. However, it has been argued that the section is intended to cover only the situation where a contractor sub-lets a part of his contracted work to a sub-contractor, and should not include the proprietor of a business who contracts out a part of his own independent operations. This argument finds some support, perhaps, in the language of Paragraph Four of Section Six. This paragraph confers upon a principal contractor who is sued for compensation by an employee of a sub-contractor the right to call in the sub-contractor as codefendant. No mention is made of a corresponding right of a principal who seeks indemnity from a contractor. It seems likely, however, that the change in the designation of parties in Paragraph Four is the result of inadvertence.

The Louisiana courts have conclusively adopted the position that Section Six embraces the principal-contractor relationship as well as the relation of contractor and sub-contractor, although there has been occasional dissent both in the courts of appeal.

5. Discussed at p. 35, infra.
7. As to this, see p. 43, infra.
and in the supreme court. The majority position seems clearly correct. No other interpretation could be made without violence to the language of this section when taken in its entirety; likewise, there is no conceivable reason of policy to justify restricting the operation of the section to the situation where one contractor lets out part of his contracted work to a sub-contractor. The section has been employed so as to hold both principal and principal contractor in connection with a wide range of hazardous businesses, and it has been held to include as principal a municipal corporation that conducted construction operations through the assistance of a federal relief agency which was regarded as an independent contractor.

Of course, there must be a subsisting agreement between the alleged principal and contractor. It has been held, for example, that an offer to employ an independent contractor which contemplates a notice of acceptance, does not give rise to an action under Section Six where notice of acceptance has not been given, even though the contractor has started to work. Also, the required relationship does not come into being simply by reason of the fact that a principal contractor and the claimant are working on a common enterprise, unless the claimant is employed by a sub-contractor under the defendant.

In following cases: Brasher v. Industrial Lumber Co., 165 So. 524, 525 (La. App. 1st cir. 1936); Jones v. Louisiana Oil Refining Corp., 3 La. App. 85, 87, 88 (2d cir. 1925); Brown v. Weber King Lumber Co., 3 La. App. 596, 597 (1st cir. 1925). Cf. dissenting opinion of Elliott, J., in Lutz v. Long-Bell Lumber Sales Corp., 153 So. 319, 321 (La. App. 1st cir. 1934), rehearing denied 154 So. 645 (1934), suggesting that if principal is to be held, he must control details of work. Of course, there must be a subsisting agreement between the alleged principal and contractor. It has been held, for example, that an offer to employ an independent contractor which contemplates a notice of acceptance, does not give rise to an action under Section Six where notice of acceptance has not been given, even though the contractor has started to work. Also, the required relationship does not come into being simply by reason of the fact that a principal contractor and the claimant are working on a common enterprise, unless the claimant is employed by a sub-contractor under the defendant.


10. See dissenting opinion of Rogers, J., in Seabury v. Natural Gas Corp., 171 La. 199, 206, 130 So. 1, 3 (1930).

11. In the following illustrative cases defendant contracted out a part of his regular business to an independent contractor. Compensation was allowed the latter's employees without comment upon the present problem: Hollinsworth v. Crossett Lumber Co., 153 So. 722 (La. App. 2d cir. 1934) (lumbering); Snyder v. Kolb, 123 So. 454 (La. App. 2d cir. 1929) (same); Dandridge v. Fidelity & Casualty Co. of New York, 192 So. 887 (La. App. 2d cir. 1939) (oil drilling); Lindsey v. White, 22 So. 2d 689 (La. App. 2d cir. 1945) (same); James v. Dear & Johnson, Inc., 172 So. 25 (La. App. 1st cir. 1937) (operator of gravel pit).


Independent Contractor Distinguished from Seller or Buyer

Section Six of the Workmen's Compensation Act is not brought into operation unless the relationship of principal and contractor exists between the defendant and the claimant's employer. The employees of a seller have no claim for compensation against the buyer of the article upon which they worked unless they were also employees of the buyer and were subject to his control.\(^\text{15}\)

The buyer is not made liable to the seller's employees by Section Six even though an exclusive buying and selling agreement existed;\(^\text{16}\) nor is it of any consequence that the buyer reserved the right to reject commodities sold under the contract,\(^\text{17}\) nor that he discharged taxes which were properly chargeable against the seller\(^\text{18}\) or otherwise assisted the seller in keeping his records in order.\(^\text{19}\) Likewise, the buyer is not subjected to compensation because he furnished materials or tools to enable the seller to fulfill his contract.\(^\text{20}\) Even the fact that the buyer paid the seller's employees\(^\text{21}\) or carried compensation insurance for their protection\(^\text{22}\) has not served to make him liable for compensation under this Section.

The great bulk of the cases in which the defendant claimed immunity from Section Six liability because of his status as purchaser have arisen in connection with lumbering transactions.\(^\text{23}\) Not infrequently the owner of a tract of timberland undertakes to log his own property under a contract to sell the timber to

\(^\text{16}\) Langley v. Widow and Heirs of McDonald, 7 La. App. 715 (2d cir. 1927); Williams v. George, 15 So. (2d) 823 (La. App. 2d cir. 1943).
\(^\text{18}\) Whitley v. Hillyer-Deutsch-Edwards Inc., 142 So. 798 (La. App. 1st cir. 1932) (severance tax on timber). However, when it is doubtful whether the relationship is that of buyer and seller or principal and contractor, the fact that the severance tax was charged against the intermediary may be persuasive. Reed v. J. W. Jeffries Lumber Co., 9 So.(2d) 87 (La. App. 2d cir. 1942).
\(^\text{19}\) Williams v. George, 15 So.(2d) 823 (La. App. 2d cir. 1943).
\(^\text{23}\) From a total of twenty-seven reported cases in which the problem was presented, only the following three cases related to transactions other than lumbering: Brown v. City of Shreveport, 15 So.(2d) 234 (La. App. 2d cir. 1943); Wilson v. Roberts, 194 So. 88 (La. App. 2d cir. 1940); Jones v. Pan American Petroleum Corp., 190 So. 204 (La. App. 2d cir. 1939).
a mill or other lumber concern. It is clear that under such circumstances the owner's employees have no valid claim against the buyer in the event of injury.\textsuperscript{24}

More often, however, the alleged seller occupies the position of a middleman between the landowner and defendant, the ultimate buyer. He negotiates a purchase of timber from the owner with a definite resale transaction to defendant in prospect. Usually he is financially insolvent and his employee's compensation claims against him are worthless. Nevertheless, the courts have consistently held that the purchasing mill or concern cannot be made liable either as a partner of the middleman under Section One,\textsuperscript{25} or as a principal under Section Six.\textsuperscript{26} This is apparently not affected by the fact that whatever remuneration the middleman may receive comes solely by reason of the labor bestowed by him and his employees in severing and transporting the timber.\textsuperscript{27}

The opinions that have dealt with this type of transaction abound in statements to the effect that the courts are alert to detect the use of the resale device as a means of avoiding compensation liability whenever the middleman is in fact an em-


\textsuperscript{25} Langley v. Widow and Heirs of McDonald, 7 La. App. 715 (2d cir. 1927); Vincent v. Industrial Lumber Co., 199 So. 593 (La. App. 1st cir. 1941).


\textsuperscript{27} Cannon v. Tremont Lumber Co., 175 So. 881 (La. App. 2d cir. 1937); Cannon v. Tremont Lumber Co., 188 So. 431 (La. App. 2d cir. 1939) (same case on retrial).
employee, partner, or contractor acting for the defendant. However, in only one reported case have the courts branded such a sale as a subterfuge. Generally, in support of the bona fide character of these arrangements the courts have relied upon the fact that the intermediary negotiated the sale-resale transaction as an independent enterpriser or that he was free to resell to whomever he pleased. Nevertheless, on several occasions they have supported deals in which the intermediary was a former employee of defendant or was operating under an exclusive resale arrangement with the latter. Whether the intermediary regarded himself as a seller or a contractor has been regarded as important in determining his status in a few cases.

In two reported instances where the transaction was regarded as a bona fide sale the initial negotiations were conducted with the assistance of a representative of the defendant and

31. Cannon v. Tremont Lumber Co., 175 So. 881 (La. App. 2d cir. 1937); Harris v. Southern Kraft Corp., 183 So. 65 (La. App. 2d cir. 1938); Anthony v. Natalbany Lumber Co., Ltd., 187 So. 288 (La. App. 1st cir. 1939); Scott v. Futrell, 197 So. 688 (La. App. 2d cir. 1940); Reed v. J. W. Jeffries Lumber Co., 9 So.(2d) 87 (La. App. 2d cir. 1942); Williams v. George, 15 So.(2d) 823 (La. App. 2d cir. 1943). Cf. Weldon v. Pickering Lumber Corp., 186 So. 371 (La. App. 1st cir. 1939); Stanley v. Industrial Lumber Co., 193 So. 367 (La. App. 1st cir. 1940) (In the last two named cases the court found defendant was a seller and that the intermediary was a buyer. The court emphasized in both instances that the latter was free to resell to whomever he chose.).
35. Hatch v. Industrial Lumber Co., 199 So. 587 (La. App. 1st cir. 1941) (owner's initial offer to sell directly to defendant was rejected. Defendant
in one extreme decision the negotiations had been completed between the landowner and defendant before the intermediary was apprised of the transaction. In nearly all the cases the defendant was consulted and his approval secured prior to the consummation of the transaction. Since the middleman usually is not financially solvent the landowner generally requires the defendant to hold back the stumpage charge from the purchase price on resale and remit this directly to him. Thus the sale to the middleman is made exclusively upon the credit of the defendant. This fact, however, has never caused the transaction to lose its character as a good faith sale and resale.

An illustration of the extent to which the position described above has been carried is furnished in *Reed v. J. W. Jeffries Lumber Company*. In that case the owner of a tract of timberland refused to sell to an intermediary on a credit basis. As a result of negotiations, the timber was transferred directly to defendant lumber company, who paid cash and was named as purchaser in the deed. The purchase price, however, was charged by defendant against the intermediary's account, to be credited as timber was cut and delivered by him to defendant.


37. However, in three reported cases when the intermediary purchased for purpose of resale to defendant, it appeared that he purchased the timber with his own funds or credit: Whitley v. Hillyer-Deutsch-Edwards, Inc., 142 So. 798 (La. App. 1st cir. 1932); Harris v. Southern Kraft Corp., 183 So. 65 (La. App. 2d cir. 1938); Weldon v. Picketing Lumber Corp., 186 So. 371 (La. App. 1st cir. 1939). This fact tends strongly to support the good faith sale character of the transaction.


39. 9 So.(2d) 87 (La. App. 2d cir. 1942).
Chargeable also against the account were severance taxes and interest and carrying charges on the money advanced. The transaction was regarded as a bona fide sale from the intermediary to defendant, and a compensation claim by the intermediary's employee under Section Six was dismissed. The court's position was fortified by the observation that the intermediary had previously purchased timber through the financial assistance of defendant, that he had never served in the latter's employment, and that part of the timber in question had been sold to third persons by the intermediary without objection by defendant.

The most extreme example of the situation under discussion is the recent case, *Grant v. Consolidated Underwriters.*

Defendant tie company entered into negotiations with a landowner to purchase timber. The latter was to receive twenty cents from defendant for each tie cut. Defendant then engaged a sawyer, McAllister, to cut the ties. He was paid the prevailing market price per tie after a deduction of the twenty cents for the landowner which defendant remitted directly to the latter. Claimant, an employee of McAllister, sought compensation against defendant for injuries received while he was cutting ties in furtherance of this arrangement. The court held that no relationship of principal and contractor existed between defendant and McAllister, claimant's employer. It stated that defendant was a purchaser of manufactured ties. Strangely enough, the opinion assumes that a principal cannot hire an independent contractor to do work upon property which the principal does not own at the time but expects to purchase thereafter. Although defendant doubtless agreed to purchase ties from the landowner, yet this should in no way affect his relationship to McAllister whose only participation in the scheme was to do a job for pay. The fact that the market price for the ties was used as the basis upon which the contractor's fee was fixed was a mere matter of convenience, and it in no way should affect the nature of the relationship. McAllister sold nothing to defendant; in fact it was not contemplated that he should at any time become owner either of the ties or of the logs from which they were made.

The same attitude prevails when it is disputed whether the intermediary is a contractor or a *purchaser* from defendant. Situations controverted in this respect usually arise where there

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has been a purported sale by defendant of stumps or timber and
the claim is made that the alleged purchaser is in fact a contrac-
tor who has undertaken to clear the owner's land under an ar-
rangement whereby the stumps are to be sold to some third
party. Employees of the intermediary have been consistently
denied compensation under Section Six. The factors empha-
sized are the same noted in the preceding pages.

Although the distinction between a sale and a contract of
service arises most frequently in connection with lumbering
transactions, it is sometimes prominent in other types of cases.
It has been held, for example, that a city may sell an abandoned
standpipe under an arrangement whereby the purchaser agrees
to remove it and account for half of the proceeds on resale
without thereby becoming liable for compensation to the pur-
chaser's employees under Section Six. Similarly, a furniture
manufacturer does not subject himself to liability under this
section to the employees of a person who makes and sells chair
frames on special order, even though the purchaser finances the
acquisition of the wood from which the frames are fabricated.
In these cases the problem is simplified somewhat by the fact
that the defendant and the alleged intermediary are not engaged
in the same class of business.

Contractor Distinguished from Lessor

An employee of a lessee of premises or equipment may
attempt to subject the lessor to compensation liability on either
of two theories: First, he may contend that the lease arrange-
ment in fact constitutes a partnership and the lessor is there-
fore the direct employer of the claimant. Second, the employee
may claim that the lease arrangement creates in fact the rela-
tionship of principal and contractor between the lessor and
lessee. If this contention is sustained, the lessor may be sub-
ject to liability under Section Six.

1939); Stanley v. Industrial Lumber Co., Inc., 193 So. 367 (La. App. 1st cir.
1940).

42. Brown v. City of Shreveport, 15 So.(2d) 234 (La. App. 2d cir. 1943).

v. Pan American Petroleum Corp., 190 So. 204 (La. App. 2d cir. 1939) (di-
tributor selling petroleum products to filling station for resale is not liable
to purchaser's employees under Section 6).

44. See Jones v. Pan American Petroleum Corp., 190 So. 204 (La. App.
2d cir. 1939). Cf. Malone, The Employer-Employee Relationship under the
Louisiana Workmen's Compensation Act (1948) 8 LOUISIANA LAW REVIEW
325.
An illustration of an unsuccessful attempt to use a lease arrangement as an evasion of compensation liability under Section Six is presented in *Snyder v. Kolb*. Kolb was the owner of a tract of timberland and a sawmill. He contracted with Simpson, the employer of the claimant, to operate the sawmill and convert the timber into crossties at an agreed price. From this figure was to be deducted fifty cents per thousand feet representing the price of the use of the sawmill. This arrangement was held to create the relation of principal and contractor between defendant and Simpson, and compensation was allowed under Section Six despite the fact that the agreement contemplated a lease of the sawmill and a deduction from the contractor's remuneration by reason thereof.

On the other hand, if one who has leased his premises to another has no interest in the work being carried out by his lessee, he is not liable for compensation to the latter's employees. The same is true of one who has leased or loaned equipment to another. It would seem that the lessor should not be liable to his lessee's employees even though the rental price for the leased property is fixed in terms of the revenues or profit to be derived from the lessee's business, although this fact might be considered with other circumstances as an indication that the lessor is in fact conducting business through the medium of a lease.

**Work Which Is a Part of Principal's Business**

A principal may contract away any work which is not a part of his business. For example, a service station leased space to a repairman without charge. Its purpose was to increase its own patronage by reason of the presence of a repair shop on the premises. It kept books for the lessee and even advanced pay for the lessee's workers. It was not liable for compensation to the lessee's helper.

In *Jones v. Pan American Petroleum Corp.*, 190 So. 204 (La. App. 2d cir. 1939), an oil company which leased a service station and required the lessee to sell its products according to directions was not subject to the compensation claim of the lessee's helper. But cf. *Mid-Continent Petroleum Corp. v. Vicars*, 221 Ind. App. 387, 46 N.E. (2d) 253 (1943).

45. 123 So. 454 (La. App. 2d cir. 1929).
46. Fouchaux v. Board of Com'rs of Port of New Orleans, 193 La. 182, 190 So. 373 (1939).
of his regular trade, business or occupation and be free of compensation liability.49 It has been observed that the purpose of Section Six is to prevent an employer from evading his liability through the use of an intermediary contractor. It follows that there is no reason for imposing liability on the principal where he is using a specialty contractor in some operation for which he would not be subject to compensation even if he were using his own employees. Since even direct employees are not entitled to compensation unless they are engaged in work which is part of the regular business of the employer,50 it is appropriate that liability under Section Six should be similarly limited.

It has been said that in determining whether or not a given piece of work is a part of the regular business of the principal the custom prevailing in the locality is important. Special work that is not done directly by others engaged in the same line of business as is the principal will not likely be regarded as subject to the provisions of Section Six.51 Thus, work in the construction of buildings or equipment to serve an ordinary industrial establishment can ordinarily be let out to a contractor without the retention of compensation liability under this section,52 and the same is true of major repairs53 and other specialized operations which are customarily performed by contractors for the business in question.54 There are frequent statements, however, to the


The principal recognized by the act is defined in Section 6 as a person who “undertakes to execute any work, which is a part of his trade, business or occupation . . . and contracts with any [contractor] for the execution by or under the contractor of the whole or any part of the work undertaken by the principal . . . .” (Italics supplied.)

50. Section 2 of the Workmen’s Compensation Act includes only the employee whose employment is “in the course of his employer’s trade, business, or occupation.”


54. Adams v. Hicks Co., Ltd., 149 So. 242 (La. App. 2d cir. 1933) (long distance transportation of sugar from mill for wholesale establishment where it was admitted that defendant did its local hauling directly). Also cf. Windham v. Newport Co., 143 So. 538, 540 (La. App. 1st cir. 1932) (court
effect that the regular business of an industry may include minor repairs which are customarily performed by the employer's own workmen.\textsuperscript{55}

If the business of the principal is the construction of buildings for sale, he cannot let out his work by contract and avoid compensation.\textsuperscript{56} Presumably this would be true even though the defendant operated exclusively through the contractors and engaged in no direct building work, since the purpose of the Act is to prevent evasion through resort to contractors when the business of defendant is the trafficking in work of this sort.\textsuperscript{57}

If the business is one whose operation normally includes a wide variety of work in the development or severance of natural resources, it cannot build or install its own structures or equipment through contractors and escape compensation liability, since installations of this kind are usually made by the principal directly. This is particularly true of oil producing enterprises. It has been held that such a business is liable to the employees of contractors hired to haul pipe and materials for the erection of oil wells,\textsuperscript{58} contractors engaged to weld oil production equipment\textsuperscript{59} or to pull casings from wells.\textsuperscript{60} In fact, the statement has been made that such an enterprise cannot avoid liability even by showing that work of this kind is customarily done through specialty contractors.\textsuperscript{61} This observation was possibly prompted by the spectre of attempted mass evasion of liability through the concerted use of contractors.

The lumbering industry has received similar strict treatment suggests by dictum that cutting and hauling stumps is not part of business of turpentine refinery); Wilson v. Roberts, 194 So. 88, 90 (La. App. 2d cir. 1940) dictum to effect that preparation of chair frames is not part of business of upholsterer and manufacturer of finished furniture). In these last two cases, however, the court found the intermediary was a seller. Cf. p. 29, supra.

55. Horrell v. Gulf & Valley Cotton Oil Co., Inc., 131 So. 709, 714 (La. App. Orl. 1930); Ranson-Rooney v. Overseas Ry., Inc., 134 So. 765, 768 (La. App. Orl. 1931). It is interesting to note in the last cited case that despite the court's statement to the effect suggested in the text, repair work on a crane was held not a part of the business of a ship operator although his own employee was in fact attempting this work with the assistance of a helper provided by a contractor.


61. Id. at 514.
in this respect. It is not possible for a lumber concern to contract out its log hauling work without retaining its compensation liability under Section Six,\(^62\) and it has even been held that a mill which employed an independent contractor to cut and haul posts for the construction of a fence upon the principal's property is liable for compensation to the contractor's employees.\(^63\) In this same case is dictum to the effect that a lumber mill remains liable under Section Six when it employs a contractor for the erection of any capital structure.\(^64\)

The case of *Lutz v. Long-Bell Lumber Sales Corporation*\(^65\) is noteworthy in this connection. Defendant was engaged in lumbering outside of the State of Louisiana exclusively. However, it maintained a lumber yard within the state which was engaged in the wholesale distribution of its products. Lumber shipped in was frequently recut in order to meet requirements of the local trade. For this purpose it employed a contractor whose employee, the claimant, was injured. Liability was imposed under Section Six. The opinion does not make clear whether the recutting of lumber was to be regarded as part of the regular business of operating an ordinary lumber yard, or whether all of defendant's operations, both inside and outside the state (which, of course, included lumbering), were to be considered in determining the regular scope of its business. A direct treatment of this interesting problem was precluded by the court's strained construction of defendant's pleading as an admission that it was engaged in lumbering within the state.

If a contractor is employed to prepare or process some material which will be used by the principal in his business, it may be difficult to determine whether Section Six is applicable. In such case the nature of the business and the customs of the trade will be important. In *James v. Dear & Johnson, Incorporated*,\(^66\) defendants operated a gravel pit and used a locomotive in connection with their work. They entered into a contract for the cutting and hauling of firewood to supply this engine. The contractor's employee was allowed compensation against defend-\(^{62}\) Carter v. Colfax Lumber & Creosoting Co., 121 So. 233 (La. App. 2d cir. 1928); Hollinsworth v. Crosett Lumber Co., 153 So. 722 (La. App. 2d cir. 1934). But cf. Grant v. Consolidated Underwriters, 33 So.(2d) 575 (La. App. 2d cir. 1947), discussed p. 33, supra. See particularly concluding paragraph of Note to this case (1949) 9 LOUISIANA LAW REVIEW 573.


\(^{64}\) Id. at 276.

\(^{65}\) 153 So. 319 (La. App. 1st cir. 1934).

\(^{66}\) 172 So. 25 (La. App. 1st cir. 1937).
ants on the view that this work was a part of defendant's regular business. It seems fair to assume that this decision reflects the strict attitude discussed earlier with reference to principals engaged in extensive development work involving the severance of natural resources; and an ordinary industrial plant which procures fuel through the work of an independent contractor might not be similarly treated.

In determining whether contracted work is a part of the employer's regular business, the scope of the entire contract should control. This has been suggested in the case of Dandridge v. Fidelity and Casualty Company of New York.67 Defendant, an oil producing company, had frequent need for welding work. It maintained several acetylene welders in its employment, but apparently it had never attempted to do electric welding with its own crews. Defendant employed a contractor to send welders equipped to do both electric and acetylene welding. One such welder was injured and was awarded compensation under Section Six although electric welding might be regarded as work outside the regular business of defendant. Presumably, however, if the major part of the contracted work is clearly outside the principal's regular operations, Section Six would not be made applicable merely because the agreement also included minor particulars which could be regarded as falling within the scope of defendant's regular business.

Section Six has been applied to a public corporation as principal. A water and sewerage board that contracted out the construction of a utility is liable for compensation to the employees of its contractor.68 The fact that the charter under which the defendant was organized provided that all construction contracts should be let to the lowest bidder did not prevent Section Six liability from arising, since this provision did not preclude the board from engaging in construction work with its own employees, but merely supplied a procedure to be followed in the event a contractor should be used.

A final observation seems appropriate here. We have previously noted69 in passing that an employee cannot recover from his direct employer unless he was hired to do work which is a part of the latter's regular business. Similarly, we see that Section Six does not apply unless the work of the contractor is part

67. 192 So. 887 (La. App. 2d cir. 1939).
69. Supra, p. 36.
of the principal's regular trade or business. The question thus arises as to whether the scope of the business is to be determined by the same criteria in answering both inquiries. It is believed that when the court is determining whether a direct employee is engaged in the regular course of the business of his employer it will be justified in manifesting a more liberal attitude toward the employee than when liability under Section Six is in question. On final analysis each enterpriser should have a fairly free hand in determining the scope of the routine work he wishes to undertake with his own workers in his business, and the practices he adopts are of some importance in this respect. If he chooses to put his own employee to a task which might be done through contractors in other similar enterprises, he has thus afforded some definite indication that he is willing to treat this work as a part of his own business.\textsuperscript{70} The frequency of the need for the particular work in question and the fact that the direct employee was a member of his regular crew, rather than an expert employed specially for the occasion, will be important here.

\textit{Hazardous Nature of Business of Principal or Contractor.}

In view of the fact that the Compensation Act covers only hazardous trades, businesses, and occupations,\textsuperscript{71} it follows that the principal cannot be made liable under Section Six unless he was engaged in a business of this character. However, if it is conceded that the work of the contractor is clearly hazardous and this work is admittedly a part of the regular business of the principal, the conclusion that the principal is engaged in a hazardous business seems inescapable. In every case where the principal has escaped liability under Section Six on the purported ground that his business was not hazardous there will be found at least a tacit admission that the hazardous work of the contractor was not a part of the regular business of the principal. In these cases the discussion of the non-hazardous nature of the latter's trade has been both unnecessary and confusing.\textsuperscript{72}

\textsuperscript{70} This observation is supported in an interesting dictum in Horrell v. Gulf & Valley Cotton Oil Co., Inc., 131 So. 709, 714 (La. App. Orl. 1930). But cf. Lutz v. Long-Bell Lumber Sales Corp., 154 So. 645 (La. App. 1st cir. 1934), where the court suggested that if the work was of such a nature as to subject defendant to liability as a direct employer, he should be made liable under Section 6.

\textsuperscript{71} Louisiana Workmen's Compensation Act, La. Act 20 of 1914, § 1(2) as amended.

\textsuperscript{72} See particularly Adams v. Hicks Co., Ltd., 149 So. 242 (La. App. 2d cir. 1933); White v. Equitable Real Estate Co., 139 So. 45 (La. App. Orl. 1932).
If it is conceded that the principal is engaged in a hazardous business, is it further necessary to show that the work of the contractor was likewise hazardous in character? So long as the contracted work is a part of the general physical operations of the principal's hazardous business, this problem will not present any difficulty, because our courts have consistently held that the hazardous character of the principal's work is shared by all subordinate but necessary enterprises that serve it. Thus, if a principal engaged in the hazardous business of drilling for oil contracts out its work of hauling by wagon, the employees of the contractor may have compensation from the principal under Section Six because the hauling business is made hazardous by reason of being integrated into the work of oil drilling.

If, on the other hand, the principal engaged in a hazardous trade employs a contractor to do work which, although it may be part of his business, is nevertheless outside the course of his main physical operations (as where an oil producer contracts out its bookkeeping work), presumably there could be no recovery under Section Six against the principal unless hazardous methods of accomplishing the work were clearly contemplated by the parties as an essential part of their agreement. This seems to be the only conclusion consistent with the purpose of Section Six, namely, to prevent the use of a contractor to evade compensation responsibility. In view of the fact that an oil producer would not be subject to the compensation claims of his own clerical staff no purpose would be served by subjecting him to liability to his contractor's employees under the circumstances described above.

According to our Compensation Act a public corporation is liable for compensation to its direct employees irrespective of the hazardous or non-hazardous nature of its work. If, however,
a public body employs an independent contractor, it will not be made liable under Section Six to the latter's employees unless the contracted work is hazardous in nature.\textsuperscript{78}

**Judgment Against Principal and Contractor—Right to Indemnity**

When the principal (or principal contractor) together with the contractor (or sub-contractor) are successfully sued by an employee under Section Six, the liability is solidary.\textsuperscript{79} It follows that the filing of suit against one of the parties interrupts prescription as to the others.\textsuperscript{80} The claimant is entitled to proceed against either the principal or the contractor, or both, as he may elect.\textsuperscript{81}

If the principal (or principal contractor) is subjected to liability, he is entitled to indemnity from the contractor (or sub-contractor) who directly employed the claimant;\textsuperscript{82} and if there is more than one intermediary contractor in the chain of employment, he may have indemnity against them all on a solidary basis.\textsuperscript{83} Each intermediary contractor in turn is entitled to indemnity against the sub-contractor operating under him, with the objective of shifting the loss ultimately to the claimant's immediate employer.\textsuperscript{84} All parties other than such employer merely lend their solvency to the employee's claim. The principal's right to indemnity is not affected by the fact that he is insured against Section Six liability. The insurance is regarded as a

\textsuperscript{78} Ibid.


\textsuperscript{81} Louisiana Workmen's Compensation Act, La. Act 20 of 1914, § 6, par. 3, as amended:

"3. Nothing in this section shall be construed as preventing an employee or his dependent from recovering compensation under this act from the contractor instead of from the principal."

\textsuperscript{82} Id. at par. 2.

"2. When the principal is liable to pay compensation under this section, he shall be entitled to indemnity from any person who independently of this section would have been liable to pay compensation to the employee or his dependent and shall have a cause of action therefor." Jones v. Louisiana Oil Refining Corp., 3 La. App. 85 (2d cir. 1926); Hardoman v. Glassell-Wilson Co., Inc. 5 La. App. 203 (2d cir. 1926); Williams v. O.K. Construction Co., Inc., 155 So. 51 (La. App. 2d cir. 1934); Lindsey v. White, 22 So.(2d) 689 (La. App. 2d cir. 1945).

\textsuperscript{83} Lindsey v. White, 22 So.(2d) 689 (La. App. 2d cir. 1945).

\textsuperscript{84} Ibid.
private arrangement between insurer and insured in which the indemnitor has no interest.\textsuperscript{85}

The right to indemnity has been treated as a claim that accrues to the principal's insurer as well, and he may recoup his loss in an action against the contractor and the latter's insurer.\textsuperscript{86}

Paragraph Four of Section Six confers upon a "principal contractor" against whom suit has been instituted the right to call as co-defendant any contractor or subcontractor who may be liable for indemnity under the Section.\textsuperscript{87} This has been regarded as a personal warranty under Article 384 of the Code of Civil Procedure against a sub-contractor who resides outside the court's jurisdiction.\textsuperscript{88} Due probably to inadvertence no mention is made of a corresponding right in a principal to call in warranty a contractor who may be similarly liable over to him, although the principal's right to indemnity is clearly recognized and has been enforced on many occasions. In one decision\textsuperscript{89} the court has interpreted literally this language of Paragraph Four. The defendant was a lumber company which had been held liable to an employee of its contractor who was hired to resaw lumber. Its demand to call in the contractor as co-defendant was denied, although presumably a separate suit for indemnity could have been maintained. It is noteworthy, however, that in two other cases\textsuperscript{90} the call in warranty was allowed to a principal who had contracted away part of his regular trade, business, or occupation. No mention was made of the difficulty discussed here.

Obviously the right to indemnity is given only in favor of a principal or principal contractor, no such right exists where the intermediary is only a lender of the employee\textsuperscript{91} or where he is merely an employee himself with the privilege of hiring helpers.\textsuperscript{92}

\textsuperscript{85} Williams v. O.K. Construction Co., Inc., 155 So. 51 (La. App. 2d cir. 1934).
\textsuperscript{86} Taylor v. Willett, 14 So. (2d) 298 (La. App. 2d cir. 1943).
\textsuperscript{87} Louisiana Workmen's Compensation Act, La. Act 20 of 1914, § 6, par. 4, as amended.
\textsuperscript{88} Jones v. Louisiana Oil Refining Corp., 3 La. App. 85 (2d cir. 1925).
\textsuperscript{89} Lutz v. Long-Bell Lumber Sales Corp., 153 So. 319 (La. App. 1st cir. 1934).
\textsuperscript{90} Jones v. Louisiana Oil Refining Corp., 3 La. App. 85 (2d cir. 1925); Lindsey v. White, 22 So.(2d) 689 (La. App. 2d cir. 1945).
\textsuperscript{91} Sadler v. May Bros., Inc., 185 So. 81 (La. App. 1st cir. 1938).