IN THE SUPREME COURT OF TEXAS

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NO. 05-0272
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ENTERGY GULF STATES, INC., PETITIONER,

v.

JOHN SUMMERS, RESPONDENT

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ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS
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Argued October 16, 2008

JUSTICE GREEN delivered the opinion of the Court, in which JUSTICE WAINWRIGHT and JUSTICE BRISTER joined, and in Parts I, II, III, IV, V, VI, VIII and IX of which JUSTICE HECHT joined, and in Parts I, II, III, IV, V, VI, VII, and IX of which JUSTICE JOHNSON joined, and in Parts I, II, III, VI, VII, and IX of which Justice Willett joined.

JUSTICE HECHT filed a concurring opinion.

JUSTICE WILLETT filed a concurring opinion.

JUSTICE O'NEILL filed a dissenting opinion in which CHIEF JUSTICE JEFFERSON and JUSTICE MEDINA joined.

Rehearing was granted in this case and our previous opinion was withdrawn. We now substitute the following in its place. The judgment remains unchanged.

* * * * *

In this workers' compensation case, we decide whether a premises owner that contracts for the performance of work on its premises, and provides workers' compensation insurance to the contractor's employees pursuant to that contract, is entitled to the benefit of the exclusive remedy defense generally afforded only to employers by the Texas Workers' Compensation Act. While the Act specifically confers statutory employer status on general contractors who qualify by providing workers' compensation insurance for their subcontractors' employees, it says nothing about whether premises owners who act as their own general contractor are also entitled to employer status, and thus the exclusive remedy defense. We hold that the exclusive remedy defense for qualifying general contractors is, likewise, available to premises owners who meet the Act's definition of "general contractor," and who also provide workers' compensation insurance to lower-tier subcontractors' employees. Because we conclude that Entergy Gulf States, Inc. meets the definition of "general contractor" under the Act, and because Entergy otherwise qualifies under the Act as having provided workers' compensation insurance under its written agreement with International Maintenance Corporation (IMC), it is entitled to the exclusive remedy defense against the negligence claims brought by IMC's employee, John Summers. We reverse the court of appeals' judgment and render judgment for Entergy.

I

Entergy contracted with IMC to assist in the performance of certain maintenance, repair and other technical services at its various facilities. The parties agreed that Entergy would provide, at its own cost, workers' compensation insurance for IMC's employees through an owner provided insurance program, or OPIP, in exchange for IMC's lower contract price. Entergy complied with

its obligation under the agreement by purchasing workers' compensation insurance covering IMC's employees. John Summers, an IMC employee, was injured while working at Entergy's Sabine Station plant. He applied for, and received, benefits under the workers' compensation policy purchased by Entergy. He then sued Entergy for negligence. Entergy moved for summary judgment on the ground that it was a statutory employer immune from common-law tort suits. *See* TEX. LAB. CODE § 408.001(a). The trial court agreed and granted judgment for Entergy. The court of appeals reversed. ___ S.W.3d ___. We granted Entergy's petition for review to examine whether section 406.121(1) of the Workers' Compensation Act excludes a premises owner from serving as its own general contractor for the purpose of qualifying for immunity as a statutory employer of its contractors' employees.

II

The Act outlines a process by which a general contractor qualifies for immunity from common-law tort claims brought by the employees of its subcontractors.[1] First, the general contractor and subcontractor must enter into a written agreement under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor. *Id.* § 406.123(a).[2] This agreement makes the general contractor a statutory employer

[1] Such immunity arises when the statutory employer invokes the "exclusive remedy" defense, which limits the employee's "exclusive remedy" to recovery of workers' compensation benefits. TEX. LAB. CODE § 408.001(a).

[2] "A general contractor and a subcontractor may enter into a written agreement under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor." TEX. LAB. CODE § 406.123(a).

of the subcontractor's employees for purposes of the workers' compensation laws. *Id.* § 406.123(e).[3] The statutory employer is entitled to immunity from common-law tort actions brought by the subcontractor's employees, and a covered employee's "exclusive remedy" for work-related injuries is workers' compensation benefits. *Id.* § 408.001(a).[4]

Summers first argues that Entergy failed to establish as a matter of law that Entergy and Summers executed a written agreement under which Entergy would provide workers' compensation coverage. *See* TEX. LAB. CODE § 406.123(a). Summers' chief argument is that the contract for maintenance, construction, and general services was between IMC and another Entergy company, Entergy Services, Inc., as opposed to Entergy Gulf States, Inc. However, the contract stated that Entergy Services, Inc. acted for itself and as agent for other Entergy Companies, defined to include the Entergy petitioner here. Summers also admitted in his response to Entergy's summary judgment motion that the contract was between IMC and Entergy Gulf States. In addition, the blanket contract order states that Entergy would be paying "O.P.I.P. wage rates," indicating that the contract's purpose included insurance coverage. Entergy also offered an affidavit from a risk manager, stating that pursuant to the contract between Entergy and IMC, Entergy agreed to procure a workers' compensation policy for IMC employees. As a matter of law, these documents establish that Entergy satisfied the written agreement requirement under the statute. Under this agreement, the workers'

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[3] "An agreement under this section makes the general contractor the employer of the subcontractor and the subcontractor's employees only for purposes of the workers' compensation laws of this state." *Id.* § 406.123(e).

[4] "Recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance coverage or a legal beneficiary against the employer or an agent or employee of the employer for the death of or a work-related injury sustained by the employee." *Id.* § 408.001(a).

compensation coverage for IMC's employees was secured by Entergy, not IMC. Likewise, it is undisputed that Summers sought and collected benefits for his injury from Entergy's OPIP. Thus, in determining Entergy's qualification as a statutory employer entitled to the exclusive remedy defense, the only remaining inquiry is whether Entergy falls within the Act's definition of "general contractor." TEX. LAB. CODE § 406.121(1). We conclude that it does.

III

The meaning of a statute is a legal question, which we review *de novo* to ascertain and give effect to the Legislature's intent. *F.F.P. Operating Partners., L.P. v. Duenez*, 237 S.W.3d 680, 683 (Tex. 2007). Where text is clear, text is determinative of that intent. *State v. Shumake,* 199 S.W.3d 279, 284 (Tex. 2006) ("[W]hen possible, we discern [legislative intent] from the plain meaning of the words chosen."); *see also Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 651–52 (Tex. 2006). This general rule applies unless enforcing the plain language of the statute as written would produce absurd results. *Fleming Foods of Tex., Inc. v. Rylander,* 6 S.W.3d 278, 284 (Tex. 1999). Therefore, our practice when construing a statute is to recognize that "the words [the Legislature] chooses should be the surest guide to legislative intent." *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 866 (Tex. 1999). Only when those words are ambiguous do we "resort to rules of construction or extrinsic aids." *In re Estate of Nash*, 220 S.W.3d 914, 917 (Tex. 2007).

With these principles in mind, we examine what the Legislature meant by the term "general contractor" in the workers' compensation statute. We do not look to the ordinary, or commonly understood, meaning of the term because the Legislature has supplied its own definition, which we

are bound to follow. TEX. GOV'T CODE § 311.011(b). The Legislature defines "general contractor" as:

> [A] person who undertakes to procure the performance of work or a service, either separately or through the use of subcontractors. The term includes a "principal contractor," "original contractor," "prime contractor," or other analogous term. The term does not include a motor carrier that provides a transportation service through the use of an owner operator.

TEX. LAB. CODE § 406.121(1). That a premises owner can be a "person" within the meaning of the statute is not challenged. The dispute, instead, centers on whether one who "undertakes to procure the performance of work" can include a premises owner, or whether that phrase limits the definition of general contractor to non-owner contractors downstream from the owner.

Since the words contained within the definition are not themselves defined, we apply a meaning that is consistent with the common understanding of those terms. According to Black's Law Dictionary, "undertake" generally means to "take on an obligation or task," and "procurement" means "the act of getting or obtaining something." BLACK'S LAW DICTIONARY 981, 1238 (7th ed. 2000). In other words, a general contractor is a person who takes on the task of obtaining the performance of work. That definition does not exclude premises owners; indeed, it describes precisely what Entergy did. In the words of Summers' own summary judgment response, Entergy "entered into a contract with [IMC] for IMC to perform various maintenance work at Entergy's plant in Bridge City, Texas." Therefore, we conclude that a premises owner can be a general contractor under the definition provided in the Act.

IV

The dissent, and some amici, contend that our reading of the statute constitutes a major change in the law that, for the first time, would enable premises owners to become statutory employers entitled to the exclusive remedy defense—a result they say the Legislature never intended. ___ S.W.3d ___. However, the Legislature enacted the section that established "deemed employer" status in 1917, the very first provision to address a subscriber's coverage of subcontractors' employees. *See* Act of Mar. 28, 1917, 35th Leg., R.S., ch. 103, § 1, Part II, sec. 6, 1917 Tex. Gen. Laws 269, 284–85. Since then, subsequent revisions have not indicated an intent to create the kind of exception for owner-subscribers the dissent would now recognize. Indeed, when the "deemed employer" statute was first enacted, the Act made no reference at all to "general contractors." Instead, the provision applied only to "subscribers," a general term that included *all* purchasers of workers' compensation insurance.[5] *Id*. Under this 1917 version, the statutory language broadly established, without

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[5] It has long been the policy of this State, expressed in every version of the Act, that no subscriber can avoid covering an injured worker merely because he was employed by a subcontractor. The 1917 version of the Act created a "deemed" employer status to address this concern:

> If any subscriber to this Act with the purpose and intention of avoiding any liability imposed by the terms of the Act sublets the whole or any part of the work to be performed or done by said subscriber to any sub-contractor, then in the event any employe[e] of such sub-contractor sustains an injury in the course of his employment he shall be deemed to be and taken for all purposes of this Act to be the employe[e] of the subscriber, and in addition thereto such employe[e] shall have an independent right of action against such sub-contractor, which shall in no way be affected by any compensation to be received by him under the terms and provisions of this Act.

Act of Mar. 28, 1917, 35th Leg., R.S., ch. 103, § 1, Part II, sec. 6, 1917 Tex. Gen. Laws 269, 284–85. In 1983, HB 1852 amended the statute by adding a different provision using the term "prime contractor," defined to mean "the person who has undertaken to procure the performance of work or services." Act of May 28, 1983, 68th Leg., R.S., ch. 950, § 1, sec. 6, 1983 Tex. Gen. Laws 5210, 5210–11. Then, in 1989, the last major overhaul of the Act kept the "undertaken to" definition, but substituted the term "prime contractor" for "general contractor" and defined that person with the same language: "a person who has undertaken to procure the performance of work or services, either separately or through the use of subcontractors." Act of Dec. 12, 1989, 71st Leg., 2d C.S., ch. 1, § 3.05, 1989 Tex. Gen. Laws 1, 15. The 1917 "deemed employer" provision remains virtually unchanged in the current Labor Code, except the term "subscriber"

qualification, that any subscriber, even a premises owner-subscriber, could qualify as a statutory employer. When the Legislature added the "written agreement" provision in 1983, definitions for "prime contractor" and "sub-contractor" were also added, but the term "subscriber" and the original "deemed employer" language were retained in the Act verbatim. Act of May 28, 1983, 68th Leg., R.S., ch. 950, § 1, sec. 6, 1983 Tex. Gen. Laws 5210, 5210–11. The Act made no distinction between different kinds of entities up and down the contracting chain, for a good reason. For the purposes of the statute, it would be just as bad for owner-subscribers to try to avoid covering workers by subcontracting out the work as it would be for general contractors, subcontractors, or any other subscriber to do the same. The dissent fails to explain why the mere restructuring of this provision in 1983, which left in the old language referring to subscribers, demonstrates a legislative intent to reorder the scope of the Act's coverage, not in a way that is consistent with its purpose of protecting workers by promoting coverage, but instead in a way that carves out an owner-exception from the Act's protection for subscribers. Nor does the dissent attempt to explain why, if such a significant change in long-standing policy was intended, it was done in such an obscure manner.

V

The dissent contends that the Act never covered premises owners in the first place, and that owners were not included within the definition of general contractors in the 1989 amendment. We disagree. The originating statute applied to "any subscriber," which necessarily means that, under the old version of the Act, a subscriber who also happened to be a premises owner would not be permitted

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has been replaced by the term, "person who has workers' compensation insurance coverage." Act of May 12, 1993, 73rd Leg., R.S., ch. 269, § 1, 1993 Tex. Gen. Laws 987, 1159 (current version at TEX. LAB. CODE § 406.124).

to escape liability to a worker by contracting out the work. By operation of the statute, then, the owner-subscriber who contracted out work to avoid liability for its workers' injuries would nevertheless be considered the employer, the injured worker would be entitled to benefits under the owner's workers' compensation policy, and the owner would be entitled to assert the exclusive remedy defense. *See* Act of Mar. 28, 1917, 35th Leg., R.S., ch. 103, § 1, Part II, sec. 6, 1917 Tex. Gen. Laws 269, 284–85. So while the provision may have been enacted for the purpose of preventing employers from trying to avoid liability, the scope of its application did not exclude premises owners.

In 1983, however, an amendment provided, for the first time, for *voluntary* employer status for upstream entities in the contracting chain through the use of written agreements between parties. Act of May 28, 1983, 68th Leg., R.S., ch. 950, § 1, sec. 6, 1983 Tex. Gen. Laws 5210, 5210–11. More specifically, a general contractor was permitted to enter into a written agreement to provide workers' compensation insurance coverage to its subcontractors and its subcontractors employees and, upon doing so, the "prime contractor"[6] would become, by virtue of the statute, the deemed employer of the subcontractors' employees entitled to the exclusive remedy defense. The provisions of the old law survived the amendment[7] so, as before, "all subscribers" remained eligible for deemed employer status, including premises owners. The question that we address today is whether the Legislature, when it amended the statute, intended to exclude premises owners from the class of entities that

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[6] "Prime contractor" was later replaced by the current term, "general contractor," but the definition remained substantively verbatim. Act of May 28, 1983, 68th Leg., R.S., ch. 950, § 1, sec. 6(c), 1983 Tex. Gen. Laws 5210, 5210–11 *amended by* Act of Dec. 12, 1989, 71st Leg., 2d C.S., ch. 1, § 3.05(a)(2), 1989 Tex. Gen. Laws 1, 15 (current version at TEX. LAB. CODE §406.121(1).

[7] Act of May 28, 1983, 68th Leg., R.S., ch. 950, § 1, sec. 6(d), 1983 Tex. Gen. Laws 5210, 5211 (current version at TEX. LAB. CODE § 406.124).

would now be entitled to voluntarily contract for deemed employer status. We conclude that it did not.

There can be no doubt that premises owners can be, and often are, employers who carry workers' compensation insurance. It is also true that owners frequently contract with others to perform work on their premises. But there has never been a requirement that an owner must first engage a general contractor to have work done on its premises. The owner is free to do the work with its own employees, to directly contract with others to do the work, or to do the work using some combination of the two. The dissent says an owner can be an employer, but cannot be a general contractor. However, we can find nothing in the statute specifying that an owner who also wears the hat of a general contractor is disqualified from coverage under the Workers' Compensation Act simply because it chooses to contract directly for work on its premises.

Entergy did the very thing the Legislature has long tried to encourage; that is, Entergy became a subscriber by taking out a workers' compensation policy for the entire work site. It would be an odd result, indeed, if this premises owner, acting as its own general contractor, and further acting in accordance with the State's strong public policy interest of encouraging workers' compensation insurance coverage for workers, was now to be *excluded* from the Act's protections. *See Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 510–16 (Tex. 1995). Whether a premises owner, general contractor, prime contractor, or subcontractor, Entergy is a "subscriber" of a workers' compensation policy and therefore satisfies the Legislature's intent to ensure consistent and reliable coverage to all employees.

VI

The dissent and the court of appeals contend that the only way to qualify as a "general contractor" is to be included in a "tripartite" relationship in which a general contractor in the middle of the transaction has, first, undertaken to perform work for an owner, and second, contracted part of that work to a subcontractor. ___ S.W.3d ___. But the statute is not written so restrictively as to encompass *only* a three-party relationship, for several reasons. First, such a construction ignores the single exception found in the last sentence of the definition: "The term does not include a motor carrier that provides a transportation service through the use of an owner operator." TEX. LAB. CODE § 406.121(1). Here, the inclusion of an "owner operator" in the definition's only exception indicates that the Legislature intended for *some* owners to qualify as general contractors, while carving out only a *narrow* class of owners excluded from the term. *Id*. Since the Legislature clearly specified that the exception apply only to a very narrow class, we decline to read this narrow exception broadly to include *all* premises owners.

Second, the definition is not as restrictive as the dissent supposes because the second sentence of the definition, which specifies types of contractors to be included within the definition, specifically provides that the list is non-exhaustive. *Id*. ("The term includes a 'principal contractor,' 'original contractor,' 'prime contractor,' or other analogous term."). If we held that an "owner contractor" is not analogous to a "principal contractor," "original contractor," or "prime contractor," we would essentially be strictly construing a sentence that is *explicitly* non-exhaustive, as even the dissent concedes. ___ S.W.3d ___. Inasmuch as we have been instructed that "'[i]ncludes' and 'including' are terms of enlargement and not of limitation or exclusive enumeration," TEX. GOV'T CODE §

311.005(13), we are restrained from circumventing Legislative intent by excluding from a non-exhaustive list a term as similar as "owner contractor." This is especially true since the original version of the Act, which shared the common purpose of encouraging coverage of subcontractors' employees, did not define any of these disputed terms, but rather utilized a single term, "subscriber." *See* Act of Mar. 28, 1917, 35th Leg., R.S., ch. 103, § 1, Part II, sec. 6, 1917 Tex. Gen. Laws 269, 284–85. Since Entergy is a subscriber of a workers' compensation policy, we cannot read such a non-exhaustive list to evince the Legislature's intent to remove Entergy from a category in which it would have been included under previous versions of the same act.

Additionally, such a reading renders meaningless the part of the definition that qualifies *how* a general contractor "undertakes to procure the performance of work." TEX. LAB. CODE §406.121(1) (a general contractor "undertakes to procure the performance of work or a service, *either separately or through the use of subcontractors*") (emphasis added). A reasonable reading of the words, "either separately or through the use of subcontractors," recognizes the distinction between the owner who takes it upon himself "separately" to procure the performance of work from subcontractors, and the owner who undertakes with a middleman "general contractor" to procure the performance of work "through the use of subcontractors." *See id.*; *see also* BLACK'S LAW DICTIONARY 1099 (7th ed. 2000) ("Separate" is defined as "individual; distinct, particular; disconnected"). Certainly, one can hire a bricklayer, electrician, or cabinet maker to remodel his own office building—thereby acting "separately"—or, he can hire a general contractor to do the same thing—thereby acting "through the use of subcontractors." This qualifier suggests that the Legislature at least contemplated the existence of a premises owner who may want to act as its own general contractor—an outcome that is by no

means uncommon.[8] The dissent's reading would have us read out this qualifier entirely, but we do not interpret a statute in a manner that renders parts of it meaningless. *See Kerrville State Hosp. v. Fernandez*, 28 S.W.3d 1, 8 (Tex. 2000) (citing *City of LaPorte v. Barfield*, 898 S.W.2d 288, 292 (Tex. 1995).

Finally, we address *Williams v. Brown & Root, Inc.*, the case relied on by the court of appeals in reaching its conclusion that a premises owner is excluded from the Act's definition of "general contractor." 947 S.W.2d 673 (Tex. App.—Texarkana 1997, no writ). In *Williams*, a premises owner, Eastman, contracted with Brown & Root to provide occasional construction services. *Id.* at 675. Brown & Root subcontracted part of the work to Tracer. *Id.* Tracer's employee, Williams, was injured on Eastman's jobsite, so he applied for and received benefits from Eastman's workers' compensation policy covering Tracer. *Id.* After Williams sued Eastman and Brown & Root for his injuries, the trial court granted summary judgment for both defendants, in part because the exclusive remedy was workers' compensation insurance, which had already been provided. *Id.* On appeal, the

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[8] *See, e.g.*, *CLDC Mgmt. Corp. v. Geschke*, 72 F.3d 1347, 1349 (7th Cir. 1996) (noting that "the Geschkes chose to act as their own general contractor on the job"); *Milwaukee & Southeast Wisconsin Dist. Council of Carpenters v. Rowley-Schlimgen, Inc.*, 2 F.3d 765, 767–68 (7th Cir. 1993) ("[T]he Board held that Church's Fried Chicken . . . functioned as its own general contractor in the 'continuing operation of building stores.'"); *Applewood Landscape & Nursery Co., Inc. v. Hollingsworth*, 884 F.2d 1502, 1503 (1st Cir. 1989) (noting that appellant who built house for himself "decided to act as his own general contractor, at least in respect to landscaping"); *Lazar Bros. Trucking, Inc. v. A & B Excavating, Inc.*, 850 N.E.2d 215, 217 (Ill. App. Ct. 2006) (noting that appellee "sought to develop land it owned" and "decided to act as its own general contractor for the project"); *1000 Va. Ltd. P'ship v. Vertecs Corp.*, 146 P.3d 423, 426 (Wash. 2006) (noting that partnership, "acting as its own general contractor, built an apartment complex"); *Waggoner Motors, Inc. v. Waverly Church of Christ*, 159 S.W.3d 42, 47 (Tenn. Ct. App. 2004) (noting that appellant "church, acting as its own general contractor, began constructing a 9,000-square-foot general purpose building in back of its existing building"); *Mortenson v. Leatherwood Constr., Inc.*, 137 S.W.3d 529, 531 (Mo. Ct. App. 2004) (noting that school district "acted as its own general contractor" on project to construct addition to school); *Wheeler v. T.L. Roofing, Inc.*, 74 P.3d 499, 501 (Colo. Ct. App. 2003) (noting that, on roofing job, "[p]laintiff acted as his own general contractor"); *Cuero v. Ryland Group, Inc.*, 849 So.2d 326, 329 (Fla. Dist. Ct. App. 2003) ("Ryland undertook to develop its own property acting as it own general contractor."); *Harris v. Rio Hotel & Casino, Inc.*, 25 P.3d 206, 207–08 (Nev. 2001) (holding that landowner could be deemed a statutory employer entitled to workers' compensation immunity).

court of appeals rejected the argument that the predecessor to this section of the Act[9] did not contemplate granting immunity to more than one general contractor. *Id.* at 676–77. Instead, the court of appeals held that Brown & Root qualified as a general contractor because it procured Tracer's services, adding that even if the statute protected only one general contractor, that party was Brown & Root because "[a] general contractor is any person who contracts directly with the owner." *Id.* at 677 (internal citations and quotations omitted). "Arguably," the court observed, "because Eastman did not contract with the owner, but instead was the owner, Eastman was not protected [by the statute]." *Id.* Not only was the court's observation here unnecessary to the decision in the case, it was also erroneous. The court erred by subordinating the statute's specific definition of "general contractor" in favor of a generic definition outside the statute. *Id.* at 677 ("A general contractor is any person who contracts directly with the owner . . . .") (internal citations and quotations omitted)). Since the Legislature provided its own definition for "general contractor," we elevate the Legislature's substituted meaning even when it departs from the term's ordinary meaning. TEX. GOV'T CODE § 311.011(b).

VII

We granted rehearing to address several supplemental arguments made by the respondent and by a number of amici, many of which urge us to address the issue before us by going beyond the statutory text and looking to extrinsic aides such as the Act's legislative history. But we have been clear that we do not resort to such extrinsic aides unless the plain language is ambiguous. *See, e.g.*,

[9] Act of Dec. 12, 1989, 71st Leg., 2d C.S., ch. 1, § 3.05, 1989 Tex. Gen. Laws 1, 15, *repealed by* Act of May 22, 1993, 73rd Leg., R.S., ch. 269, §5, 1993 Tex. Gen. Laws 987, 1273 (current version at TEX. LAB. CODE § 406.121).

Nash, 220 S.W.3d at 917 ("If a statute is clear and unambiguous, we apply its words according to their common meaning without resort to rules of construction or extrinsic aides."); *Sheshunoff*, 209 S.W.3d at 652 n.4.

Even if we assume the definition of "general contractor" is ambiguous, the legislative history of the bill's passage favors Entergy, not Summers. The legislative history that supports Summers' outcome is apparent only in bills that *failed* to pass,[10] yet "we attach no controlling significance to the Legislature's failure to enact [legislation]," *Texas Employment Comm'n v. Holberg*, 440 S.W.2d 38, 42 (Tex. 1969), for the simple reason that "[i]t is always perilous to derive the meaning of an adopted provision from another provision deleted in the drafting process." *Dist. of Columbia v. Heller*, 128 S.Ct. 2783, 2796 (2008); *see also Dutcher v. Owens*, 647 S.W.2d 948, 950 (Tex. 1983) (discerning legislative intent from failed bills would be mere "inference" that "would involve little more than conjecture").[11]

As for the legislative history of what *did* pass, the 1989 overhaul of the Workers' Compensation Act amended the statutory definition of "subcontractor." Under the pre-1989 definition, a subcontractor was defined as "a person who has contracted to perform all or any part of the work or services which a prime contractor has contracted *with another party* to perform." Act of

[10] Summers and amici point to nine failed bills as evidence the Legislature has "repeatedly" rejected efforts to let premises owners assert the exclusive remedy defense. Chronologically, the bills are HB 2279 from the 74th Legislature (1995), HBs 2630 and 3024 from the 75th Legislature (1997), SB 1404 from the 76th Legislature (1999), HBs 3120 and 3459 from the 77th Legislature (2001), HB 2982 and SB 675 from the 78th Legislature (2003), and HB 1626 from the 79th Legislature (2005).

[11] Even if we were to consider failed bills, these cited bills were not only unsuccessful but, with one possible exception, unrelated to this case. *See* SB 1404 from the 76th Legislature (1999) (amending "general contractor" to include "an owner or lessor of real property").

May 28, 1983, 68th Leg. R.S., ch. 950, § 1, 1983 Tex. Gen. Laws 5210, 5210, *amended by* Act of Dec. 11, 1989, 71st Leg., 2d C.S., ch.1, § 3.05(a)(5), 1989 Tex. Gen. Laws 1, 15 (emphasis added). The Act, as amended, deleted "with another party," which is the very phrase that Summers argues *prevents* a premises owner from also being the general contractor. *See Wilkerson v. Monsanto Co.*, 782 F. Supp. 1187, 1188–89 (E.D. Tex. 1991) (interpreting "contracted with another party" in the pre-1989 definition to mean the prime contractor and premises owner must be distinct entities). We give weight to the deletion of the phrase "with another party" from the amended definition since we presume that deletions are intentional and that lawmakers enact statutes with complete knowledge of existing law. *See Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 301 (Tex. 1990). It is, of course, axiomatic that the deletion of language better indicates the Legislature's intent to remove its effect, rather than to preserve it. Thus, the removal of the phrase "with another party" from the subcontractor definition favors, rather than argues against, an interpretation allowing premises owners to act as their own general contractors for the purpose of workers' compensation laws. TEX. LAB. CODE § 406.121(5). Enforcing the law as written is a court's safest refuge in matters of statutory construction, and we should always refrain from rewriting text that lawmakers chose, but we should be particularly unwilling to reinsert language that the Legislature has elected to delete. *See Simmons v. Arnim*, 220 S.W. 66, 70 (Tex. 1920) ("Courts must take statutes as they find them.").

Amici cite to statements by some lawmakers that the Act, and particularly the 1989 amendment, was never intended to provide statutory employer status to premises owners. Just as we decline to consider failed attempts to pass legislation, we likewise decline consideration of lawmakers' post-hoc statements as to what a statute means. It has been our consistent view that

"[e]xplanations produced, after the fact, by individual legislators are not statutory history, and can provide little guidance as to what the legislature collectively intended." *In re Doe*, 19 S.W.3d 346, 352 (Tex. 2000) (citations and quotations omitted). At bottom, at least some of the amici seem to argue that the workers' compensation scheme is itself inadequate, and that an injured employee should have remedies available apart from the benefits offered by the Act, including the ability to sue a negligent premises owner. As a judicial question, this argument lacks merit because the availability and adequacy of workers' compensation benefits is a purely legislative matter.

VIII

Excluding a premises owner who acts as a general contractor also fails to serve the public policy of encouraging workers' compensation coverage for all workers. *See Wingfoot Enters. v. Alvarado,* 111 S.W.3d 134, 140, 142 (Tex. 2003); *Garcia*, 893 S.W.2d at 521. As noted, the Act offers incentives to general contractors to provide workers' compensation coverage broadly to work site employees. In exchange, the Act specifically protects general contractors—who are not direct employers of subcontractors' employees—by allowing them to assert as a statutorily deemed employer the exclusive remedy defense. In light of this statutory protection, it would seem to be contrary to the state's public policy to read out of the Act's protections those premises owners who have otherwise qualified under the Act by purchasing workers' compensation coverage for their work site employees, but who have chosen to act as their own general contractor.

In the dissent's view, a premises owner who, in complying with the Act, enters into a written agreement to provide workers' compensation coverage to all contractors and contractors' employees at its work site would be the only contractor-employer in the contracting chain not afforded the exclusive remedy defense. Presumably, in that event all the downstream contractors would be considered subscribers under the premises owner's OPIP, thereby qualifying as statutory employers by virtue of their written agreements. *See* TEX. LAB. CODE § 406.123(a). But the dissent would disqualify the premises owner—the one who secured and actually paid for the policy—from being a statutory employer of his subcontractors' employees. As a result, the premises owner's own employees, working side-by-side with the other contractors' employees, would be limited to workers' compensation benefits for their injuries while the other contractors' employees injured in the same accident would be permitted to seek tort remedies against the premises owner in addition to the workers' compensation benefits provided by the premises owner. Unless the statute directs such a result, it makes no sense to read the statute in such an unreasonable manner. The dissent contends that this outcome is a policy choice made by the Legislature, but we interpret the statute in the context of a policy that *encourages* the provision of workers' compensation coverage to all workers on a given work site, not *discouraging* it by denying the statute's protections to the owner who enters into just such a plan.

IX

We conclude that Entergy qualifies under the Act's definition as a "general contractor" and, as a statutory employer, is entitled to assert the exclusive remedy defense. TEX. LAB. CODE § 408.001. The judgment of the court of appeals is reversed and a take-nothing judgment is rendered in favor of Entergy.

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Paul W. Green
Justice

OPINION DELIVERED: April 3, 2009