Case Alert

Connecticut Supreme Court Grants Workers' Compensation Exclusive Remedy Protection to Contractor Providing CCIP

Connecticut joins a handful of other states that have affirmatively extended the workers' compensation exclusive remedy protection to contractors who procure workers' compensation benefits through a contractor controlled insurance program ("CCIP").[1]

The Connecticut Supreme Court in *Elvira R. Gonzalez et al. v. O and G Industries, Inc., et al.,* held that O&G Industries Inc. ("O&G"), a general contractor, had "paid compensation benefits" within the meaning of Conn. Gen. Stat. § 31-291, when its workers' compensation insurer provided benefits to two injured employees of subcontractors. The court thus concluded that O&G was entitled to immunity from a suit brought by the injured employees.

In 2009, O&G served as the general contractor for the construction of a power plant in Middletown, Connecticut. O&G implemented a CCIP for the project, which provided workers' compensation benefits to all enrolled subcontractors. On February 7, 2010 an explosion occurred at the construction site, injuring a number of project workers. Two of those workers, who were employed by two different project subcontractors, brought suit against O&G, alleging negligence and strict liability claims.[2] Old Republic General Insurance Company, the workers' compensation insurer on the CCIP, paid workers' compensation benefits to the injured workers, including medical expenses and lost wages. Having paid the entire workers' compensation policy premium, the $250,000 deductible, and a $17,500 claim handling fee[3], O&G filed a motion for summary judgment, arguing that the workers' "principal employer", it was immune from liability under § 31-291. The injured workers opposed the motion, arguing that there was a question of material fact as to whether O&G actually "paid" workers' compensation benefits.[4] They argued that O&G "effectively shifted the cost of the [workers' compensation insurance] premium to its subcontractors by issuing change orders in the amount of each subcontractor's insurance costs." Ergo, that the subcontractors actually paid for the workers' compensation through a reduction in their contract bid prices.

The trial court granted O&G's motion for summary judgment, concluding that the meaning of "paid" within § 31-291 was "to simply transfer money." The trial court further concluded that § 31-291 does not require a principal employer to pay all of the workers' compensation benefits due to an injured employer to receive immunity. The workers appealed the matter to the Connecticut Supreme Court.

The Connecticut Supreme Court disagreed with the trial court and held that § 31-291 required a principal employer to "bear the cost" of the injured employees' benefits[5], not "simply transfer money" to the employees. Further, it held that the principal employer must bear the entire cost of the benefits in order to enjoy immunity. However, despite these holdings, the court still affirmed summary judgment in favor of O&G, finding that O&G bore the entire cost of the injured employees' benefits. In reaching its conclusion, the court focused on the fact that O&G was solely responsible for the payment of the CCIP premium, deduct-

ible, and claim handling expenses. Further, because the subcontractors had included the cost of insurance in their bids, O&G had "no choice" but to subtract the subcontractors' insurance costs through change orders. Otherwise, O&G would have been "paying double" for the subcontractor's workers compensation insurance.

The Gonzalez decision joins previous Connecticut appellate-level authority granting immunity to an owner who provided workers' compensation benefits through an owner-controlled insurance program. See *Bishel v. Conn. Yankee Atomic Power Co.,* 62 Conn. App. 537 (2001), cert. denied, 256 Conn. 915 (2001).

For further information on the impact of the Gonzalez decision and the nuances of wrap-up insurance programs, please contact Edwin L. Doernberger at eld@sdvlaw.com or (203) 287-2101 or K. Alexandra Byrd at kab@sdvlaw.com or (203) 287-2127.

1. For a complete overview of how each state analyzes the workers' compensation exclusive remedy protection as applied to wrap-up insurance programs, please see SDV's 50 State Survey available electronically at http://www.sdvlaw.com/wp-content/uploads/2015/09/Workers%E2%80%99-Compensation-Immunity-State-by-State-Survey.pdf
2. The workers brought suit pursuant to Conn. Gen. Stat. § 31-293.
3. The relevant subcontractors signed O&G's standard subcontract, which stated that O&G may elect to implement a CCIP for the project and, if it did so, that the subcontractor's enrollment would be mandatory. The standard subcontract also provided that after each subcontractor enrolled in the CCIP, it would be relieved of its contractual duty to provide workers' compensation insurance.
4. The workers did not contest that O&G was a "principal employer."
5. The term "paid" is not defined in Conn. Gen. Stat. § 31-291, nor elsewhere in the Workers' Compensation Act. Therefore, the court looked to dictionary definitions of "pay" to determine the proper meaning. The court also looked to the legislative history of § 31-291 to determine which definition of "pay" the legislature intended.

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