

## NEWS ALERT

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# CONSTRUCTION GROUP



## Can a CCIP provide workers' compensation immunity for claims by injured employees of subcontractors?

### In Connecticut, the answer was yes.

By Andrew G. Wailgum & Michael J. Donnelly | November 17, 2017

Work-related injuries are an unfortunate reality in the construction industry, as are the lawsuits that often follow. One typical scenario arises when there is an injury to an employee of a subcontractor, and that individual then sues the prime contractor. As a matter of state law, the injured employee's claim against his employer (the subcontractor here) is limited to workers' compensation benefits for any injuries or lost wages. In order to seek additional compensation for his damages, an injured employee often brings suit against the prime contractor and other parties who he believes may be responsible for his injuries. However, a recent Connecticut Supreme Court decision extended the workers' compensation immunity to a prime contractor that had procured a Contractor's Controlled Insurance Policy ("CCIP") for the project. [Gonzalez v. O and G Industries, Inc.](#), 322 Conn. 291 (2016).

The plaintiffs in [Gonzalez](#) were injured when a massive explosion occurred toward the end of the construction of a power plant. Tragically six workers were killed and over fifty others were injured, two of whom were the plaintiffs in [Gonzalez](#). As employees of a subcontractor and a sub-subcontractor, the plaintiffs recovered workers' compensation benefits from the CCIP workers' compensation policies issued in their employers' names, including medical expenses and lost wages. The plaintiffs then brought suit against the prime contractor seeking additional recovery for their injuries.

In the lawsuit, the prime contractor took the position that it was entitled to immunity under Connecticut's workers' compensation law (Conn. Gen. Stat. §§ 31-275, et seq.). Section 31-291 of the General Statutes provides, in essence, that the prime contractor is entitled to immunity from the claims of injured lower tier employees if the prime contractor "has paid compensation benefits under this chapter to such injured employee or his dependent for the injury or death which is the subject of the action." In [Gonzalez](#), the prime contractor maintained that it was immune from the lower tier employees' lawsuit because it had paid for the CCIP, which included the workers' compensation policies for the plaintiffs' employers, and because it paid the workers' compensation policy deductible as well as the claim handling fee for the lower tier employees' claims.

In affirming the trial court's granting of the prime contractor's motion for summary judgment, the Connecticut Supreme Court examined the phrase "paid compensation benefits" to determine whether

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the prime contractor was entitled to immunity from suit under the workers' compensation statutory scheme. The Court found that when properly placed into the context of the Connecticut workers' compensation act, that phrase requires that the prime contractor "must shoulder the financial burden of [paying for workers' compensation] benefits, rather than pass that responsibility on to its subcontractors or the second injury fund" and that it "requires [the prime contractor] to demonstrate that it bore the cost of all of the workers' compensation benefits to an injured employee in order to obtain statutory immunity from civil actions."

The Court went on to find that there was no dispute that the prime contractor had borne all of the costs – it paid the workers' compensation premium (\$1,150,465), deductible (\$250,000) and claim handling fee (\$17,500). Although the subcontractors' original subcontract amounts included the workers' compensation premium as required by the project owner's original bid request, it was later decided that the prime contractor would purchase the CCIP, which removed the need for subcontractors to purchase workers' compensation policies. The prime contractor then issued credit change orders to the subcontractors for the premiums. Although the lower tier employees attempted to argue that this somehow showed that the prime contractor did not pay the entire premium, the Court rightly rejected this argument. Thus, the Court determined that the prime contractor met the statutory language and was entitled to immunity from suit by the lower tier employees.

CCIP policies typically save project owners money by reducing the overall insurance costs for the project. In addition, prime contractors that have healthy CCIP programs across many projects can often generate additional revenue through these programs. And now there appears to be another benefit to utilizing a CCIP program – the prime contractor may enjoy immunity from suits for bodily injury by lower tier employees. This immunity obviously depends on the statute in the particular jurisdiction and the particular facts involved, but it raises the possibility of workers' compensation immunity for prime contractors in certain circumstances.

*If you have any questions regarding the information included in this bulletin, please contact:*

*Andrew G. Wailgum at [awailgum@murthalaw.com](mailto:awailgum@murthalaw.com) or 617.457.4006*

*Michael J. Donnelly at [mdonnelly@murthalaw.com](mailto:mdonnelly@murthalaw.com) or 860.240.6058*

**Andrew G. Wailgum, Chair**  
617.457.4006  
[awailgum@murthalaw.com](mailto:awailgum@murthalaw.com)

**Terence J. Brunau**  
203.772.7785  
[tbrunau@murthalaw.com](mailto:tbrunau@murthalaw.com)

**Sara P. Bryant**  
617.457.4048  
[sbryant@murthalaw.com](mailto:sbryant@murthalaw.com)

**Loring A. Cook, III**  
617.457.4014  
[lcook@murthalaw.com](mailto:lcook@murthalaw.com)

**Michael J. Donnelly**  
860.240.6058  
[mdonnelly@murthalaw.com](mailto:mdonnelly@murthalaw.com)

**Leslie P. King**  
203.772.7775  
[lking@murthalaw.com](mailto:lking@murthalaw.com)

**Anthony R. Leone**  
617.457.4117  
[aleone@murthalaw.com](mailto:aleone@murthalaw.com)

**Joseph B. Schwartz**  
860.240.6067  
[jschwartz@murthalaw.com](mailto:jschwartz@murthalaw.com)

**Ryan M. Suerth**  
860.240.6157  
[rsuerth@murthalaw.com](mailto:rsuerth@murthalaw.com)

**David R. Sullivan**  
617.457.4156  
[drsullivan@murthalaw.com](mailto:drsullivan@murthalaw.com)

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