

Grosdidier in Law360: Limitations of Exclusivity Defense in Workers' Comp Cases

March 22, 2018

PRACTICES Construction Litigation, Litigation

In *Halferty v. Flextronics America LLC*, the Corpus Christi Court of Appeals followed its Houston sister court in holding that a general contractor, or GC, that required its subcontractor to maintain workers' compensation insurance for the subcontractor's employees did not "provide" coverage pursuant to Texas Labor Code Section 406.123(a) so as to enjoy the exclusive remedy defense. The case is important because it confirms that the higher participants in the usual construction contractual chain (owners, GCs, and higher-tier subcontractors) cannot merely push workers' compensation requirements down to the lowest-tier subcontractors and still enjoy the exclusivity defense. The defense's applicability starts with the party that provides the coverage, not the party that contractually imposes it below.

For example, all parties in the construction contractual chain enjoy the exclusivity defense when an owner provides and imposes an owner-controlled consolidated insurance program, or OCIP, on its GC and its subcontractors of all tiers. But a GC that merely imposes the workers' compensation coverage on its subcontractor does not. By implication, an owner that requires a GC to provide a contractor-controlled CIP, or CCIP, to its employees and its subcontractors of all tiers is not entitled to the exclusivity defense. This limitation applies despite Texas higher courts' propensity to allow parties to raise this defense in CIP cases, in part because of the Texas Supreme Court's and the Legislature's "decided bias' for [finding workers' compensation] coverage" in these cases.

The Texas's Workers' Compensation Act offers a qualified immunity to employers who provide workers' compensation insurance to their employees. This immunity extends to the employer's agents and employees. Injured employees renounce their common law rights to sue their employers in exchange for timely (albeit limited) financial compensation — their exclusive remedy vis-à-vis their employers. The exclusive remedy defense does not bar tort actions by injured employees against third parties, however. Injured subcontractor employees in the construction industry commonly sue the GC, or the owner or both, for their own negligence in so-called third-party over actions. ...

To read the full article, click on the PDF linked below.

[Pierre-Grosdidier-Workers-Comp.PDF](#)

[First appeared in Law360 on March 21, 2018.](#) (Subscription required)