



**Risk Management for Contractors: Follow Safety Regulations, Read Your Workers' Comp Policy**  
by Ryan McLane

The conscientious contractor seeks to prevent accidents on the construction site for a number of both ethical and economic reasons. Nevertheless, accidents inevitably occur, even when care is taken. However, by following a few basic precautions, the contractor can both reduce the risk of accident and limit its out-of-pocket workers' compensation liability in the event of an accident.

The Kentucky General Assembly designed workers' compensation law to encourage compliance with safety regulations. Specifically, KRS 342.165 penalizes an employer who fails to follow safety regulations by increasing that employer's workers' compensation liability to the injured employee by 30%. Workers' compensation insurance carriers routinely include a provision in their policies excluding coverage of this increased liability.

On October 29, 2009, the Kentucky Supreme Court reviewed the legality of that exclusion in *KAGC v. Music Construction, Inc.* The Court specifically confronted the issue of whether the insurance carrier may sue an employer for reimbursement of increased benefits paid as a result of the 30% penalty. In that case, an employee of Music Construction sustained serious work-related injuries resulting from a cave-in as he was placing pipe in a deep trench. Music Construction had failed to follow safety regulations, and the 30% penalty was imposed.

The Supreme Court ruled that the insurance carrier, KAGC, must initially pay the 30% increase in benefits to the injured employee, despite the exclusion. However, the Court also ruled that the exclusion was valid in the sense that KAGC could sue Music Construction for reimbursement of increased benefits it had to pay. In light of this decision, contractors should examine their compliance with safety regulations and carefully review their workers' compensation policies to determine whether this exclusion exists. Those two basic measures of risk management reduce the likelihood of accidents, eliminate the possibility of a hefty penalty, and promote understanding of an important part of liability coverage.