

Ghost Policies, Regulatory Arbitrage, and the Illusion of Compliance in Georgia Workers' Comp

Are we managing risk or manufacturing paperwork?

Because when compliance exists only to satisfy requirements created by the same entities selling the solution, we're no longer talking about protection.

There's a conversation the insurance industry keeps having quietly—and one it avoids having publicly—about ghost workers' compensation policies. These policies are technically legal, widely sold, and routinely required. Yet they often cover no employees, exclude the only person doing the work, and transfer no meaningful risk. And the reason they exist has very little to do with Georgia law.

The Circular System That Created the Need for Itself

Let's start with what Georgia actually requires.

Under Georgia statute, workers' compensation is governed by the Georgia State Board of Workers' Compensation. A business with three or more employees must carry workers' comp. Sole proprietors and single-member LLCs with no employees may legally opt out.

Many people instinctively label ghost policies as bad faith. Legally, that's not quite right. Bad faith in insurance law generally applies to claims handling—denying a covered loss without reasonable grounds.

Ghost policies avoid that trap by doing something very deliberate. They never promise coverage in the first place. The exclusions are disclosed, the forms are filed, and the premium is collected exactly as approved.

Insurance carriers impose underwriting requirements on general contractors.

1. General contractors embed those insurance requirements directly into their subcontractor agreements.

2. Subcontractors who are legally exempt from workers' compensation requirements are told they must carry a workers' compensation policy in order to be hired or paid for the job.
3. Carriers sell a minimum-premium workers' compensation policy designed primarily to satisfy that contractual requirement.
4. The policy often lists no payroll, covers no actual employees, and is structured so that little or no meaningful workers' compensation exposure is transferred.
5. The carrier's underwriting requirement is now technically "satisfied."
6. The subcontractor can show proof of insurance, the general contractor can collect the certificate, and the project file appears compliant.

But in many cases, **no meaningful risk has actually been transferred.**

What exists instead is a document trail that satisfies underwriting guidelines without materially changing the underlying exposure. This is **self-referential compliance**: a requirement created by insurers, enforced through construction contracts, and ultimately satisfied by a policy designed primarily to check a box. Calling that arrangement "voluntary" stretches the term beyond recognition.

This isn't bad faith. But it does illustrate how **regulatory arbitrage** can emerge within otherwise legal systems. From a legal standpoint, no promise is broken because no protection was ever offered.

Regulatory arbitrage occurs when:

- A system exploits gaps between law, contracts, and enforcement
- Compliance is achieved through optics rather than substance
- Economic pressure substitutes for legal mandate

Ghost policies sit in the gap between:

- What the state requires
- What carriers prefer
- What subcontractors can realistically refuse

In practice, they monetize **access to work—not risk.**

Why Federal Law Doesn't Save Us

At this point many people ask: Why doesn't federal law step in? Because insurance is deliberately carved out.

Under the McCarran-Ferguson Act, insurance regulation is delegated to the states. Federal antitrust law applies only in narrow circumstances such as boycott, coercion, or intimidation—all defined extremely narrowly in case law.

Economic pressure, even when it threatens someone's ability to earn a living, is generally **not considered legal coercion.**

As long as:

- Multiple carriers sell the product
- Participation is technically optional
- Disclosures exist somewhere in the policy

the system tends to survive judicial scrutiny.

But the economic reality on the ground can look very different.

For many sole proprietors in the construction trades, the premium associated with a workers' compensation policy can be wildly disproportionate to the exposure being insured. Because these policies are often rated using payroll assumptions designed for employers with actual staff, a single independent subcontractor can face premiums that consume a significant portion of their annual revenue.

In some cases, the difference between operating under a statutory exemption and purchasing a policy required by contract can exceed **\$15,000 to \$25,000 per year**. For smaller subcontractors, that can represent **twenty to thirty percent of their annual income.**

At that point, the "choice" begins to look less like a market decision and more like a condition of participation. Technically, the subcontractor can decline the policy, however in practice, declining it often means declining the work itself.

What makes this dynamic particularly unusual is that the same industry ecosystem that creates the contractual demand for the policy also controls the rating structures that determine the cost of the alternative.

Insurance carriers establish underwriting guidelines that push coverage requirements down to general contractors. General contractors embed those requirements into subcontractor agreements. Subcontractors are then forced to purchase policies priced according to rating structures controlled by the same insurance marketplace.

In effect, the industry helps create the demand for the product while also determining the cost of the only viable option. Legally, courts tend to view this as voluntary market participation because multiple carriers sell the product and no statute explicitly requires the purchase.

Economically, however, the arrangement can function very differently. When the cost of the “optional” requirement becomes large enough to determine whether someone can work at all, the line between market choice and economic compulsion becomes difficult to ignore.

That tension is where ghost policies thrive.

A Constitutional Analogy

This tension begins to resemble something constitutional scholars refer to as the **unconstitutional conditions doctrine**.

In simple terms, the government cannot require someone to surrender a legal right as a condition of receiving a benefit. While ghost policies arise primarily through private contracts rather than direct government mandate, the structure raises a similar philosophical question.

When the law explicitly allows certain subcontractors to operate without workers' compensation coverage, but the economic structure of the market effectively makes that exemption unusable, the statutory right begins to exist more on paper than in reality. Access to work becomes conditioned on purchasing a product the law itself never required.

Courts may not frame the issue this way today. But from a policy perspective, it raises a deeper question about the difference between **legal permission and practical access**. If a statutory exemption cannot realistically be exercised because the surrounding system economically penalizes its use, the right begins to function less like a protection and more like a technicality.

That tension sits quietly underneath the ghost policy market.

The Ethical Failure at the Core

Workers' compensation was created to:

- Protect injured workers
- Provide predictable recovery
- Remove fault from workplace injury disputes

Ghost policies do none of that.

They:

- Do not protect workers
- Do not meaningfully protect general contractors
- Do not reduce injury risk
- Do not align premium with exposure

They exist to satisfy contractual optics, not public policy.

This is why so many subcontractors feel trapped:

- They cannot work without the policy
- They cannot afford real coverage
- The "insurance" they are buying protects no one

That's not free-market choice. It's **structural economic coercion**, even if the law refuses to call it that.

What Honest Reform Would Look Like

If the industry were serious about ethics and risk transfer, ghost policies would not be the default. Practical alternatives already exist.

1. Statutory Recognition of Exemption Affidavits

Georgia could codify acceptance of notarized affidavits for legally exempt subcontractors, something many states already do successfully.

2. Mandatory Disclosure on Certificates

Certificates should clearly state:

- No covered employees
- Owner excluded
- Policy issued solely to satisfy contractual requirements

Full transparency would collapse this market overnight—and that says everything about the ethical dimension.

3. Risk-Proportionate Pricing

Premiums should align with actual exposure, not minimums designed for administrative convenience.

4. Properly Labeled Alternative Coverage

If the goal is injury protection, offer occupational accident coverage and stop calling it workers' compensation.

5. GC-Level Solutions

Wrap programs, controlled insurance programs, or accepted affidavits with indemnification often protect general contractors better than paper compliance ever did.

The Question the Industry Must Answer

Ghost policies persist because:

- They are profitable
- They reduce underwriting friction
- They shift liability optics
- They fail quietly

But insurance claims thrive on ethics, trust, and risk transfer.

So the real question is this:

Are we managing risk—or manufacturing paperwork?

Because when compliance exists only to satisfy requirements created by the same entities selling the solution, we're no longer talking about protection.

We're talking about **regulatory arbitrage disguised as insurance**.
And the longer we ignore that distinction, the harder it becomes to defend the system with a straight face.

