KATZ, J., dissenting. The majority concludes that, if an assessment of interest and attorney's fees for an undue delay of payment of workers' compensation benefits falls within the meaning of a " '[c]overed claim' " under the Connecticut Insurance Guaranty Association Act (guaranty act), General Statutes, §§ 38a-836 through 38a-853, the immunity provision of that act, General Statutes § 38a-850,[1] cannot bar payment of such a claim. It further concludes, however, that the assessment at issue in the present case is not a covered claim. I disagree. Specifically, the guaranty act recognizes the distinct nature of a workers' compensation policy, due to the mandates of the Workers' Compensation Act, General Statutes § 31-275 et seq., and thereby deems such an assessment a covered claim under the guaranty act. Indeed, the text of the guaranty act and the history of the treatment of claims against insolvent insurers under the Workers' Compensation Act, demonstrate a clear legislative intent to afford greater recovery for workers' compensation claims than for other claims that fall under the guaranty act. Because I conclude that an assessment of interest and attorney's fees under the Workers' Compensation Act is a covered claim under the guaranty act, I disagree with the majority that § 38a-850 shields the Connecticut Insurance Guaranty Association (association) from the assessment by the workers' compensation commissioner for the third district (commissioner) of interest and attorney's fees for the association's undue delay in paying workers' compensation benefits owed to the plaintiff, James Potvin.

In order to provide context to the meaning of a covered claim as applied to a workers' compensation policy, I begin with the clear evidence in the guaranty act that claims against insolvent workers' compensation insurers are treated differently than claims against other insurers. The guaranty act divides the source of recovery for claims against insolvent insurers into three separate accounts, one of which is dedicated solely to workers' compensation insurance. General Statutes § 38a-839 ("[f]or the purposes of administration and assessment, [the] association shall be divided into three separate accounts: [a] [t]he workers' compensation insurance account; [b] the automobile insurance account; and [c] an account for all other insurance to which sections 38a-836 to 38a-853, inclusive, apply"). Although every other claim covered by the guaranty act must be filed within two years of an insurer's declaration of insolvency, workers' compensation claims are controlled by the limitations period set forth under the Workers' Compensation Act, which can extend considerably longer. See General Statutes § 38a-841 (1) (a) (ii) (B) (requiring that association "be obligated for any claim filed with the association after the expiration of

two years from the date of the declaration of insolvency unless such claim arose out of a workers' compensation policy and was timely filed in accordance with [General Statutes §] 31-294c [of the Workers' Compensation Act]"); see, e.g., *Ricigliano* v. *Ideal Forging Corp.*, 280 Conn. 723, 727, 912 A.2d 462 (2006) (claim filed six years after claimant was diagnosed with multiple myeloma deemed timely under Workers' Compensation Act because it was filed within three years of claimant's knowledge of causal connection between disease and employment). In setting forth the scope and limitations of a covered claim, which is defined as "an unpaid claim . . . [that] arises out of and is within the coverage and subject to the applicable limits of an insurance policy to which sections 38a-836 to 38a-853, inclusive, apply"; General Statutes § 38a-838 (5); the guaranty act sets a cap on payments of all such covered claims, except that the association "shall pay the *full amount* of any such claim *arising out of a workers' compensation policy* . . . ." (Emphasis added.) General Statutes § 38a-841 (1) (a) (ii).

These provisions demonstrate two principles. First, recovery for claims against insolvent workers' compensation insurers is more liberal than recovery available for claims against all other types of insurers. See also General Statutes § 38a-838 (5) (B) (iii) (exempting workers' compensation claimants from exclusion under definition of " '[c]overed claim' " for nonresidents filing claim against insurers having above specified net worth). Second and more significantly, whereas the terms and limits of compensation for other claims are derived from the guaranty act, the guaranty act specifically dictates that terms of recovery for workers' compensation claims shall be derived from the Workers' Compensation Act. This distinction is of paramount significance when divining whether the assessment at issue falls within the scope of a covered claim. Because a covered workers' compensation claim must extend to "the full amount of any such [covered] claim arising out of a workers' compensation policy"; General Statutes § 38a-841 (1) (a) (ii); the question is whether an assessment of interest and attorney's fees under General Statutes § 31-300 arises out of a workers' compensation policy. That question must be answered in the affirmative.

The Workers' Compensation Act clearly mandates that "[n]o policy of insurance against liability under [the Workers' Compensation Act] . . . shall be made unless the same covers the *entire liability* of the employer thereunder . . . ."[2] (Emphasis added.) General Statutes § 31-287. As a general matter, I agree with the majority that the term liability is an expansive one that generally would encompass an assessment of interest or attorney's fees. See Black's Law Dictionary (6th Ed. 1990) (Defining "[l]iability" as follows: "The word is a broad legal term. . . . It has been referred to as of

the most comprehensive significance, including almost every character of hazard or responsibility, absolute, contingent or likely. It has been defined to mean: all character of debts and obligations . . . .'' [Citation omitted.]). Moreover, under the Workers' Compensation Act, workers' compensation insurers specifically are deemed responsible for assessments of interest and fees for undue delay. See General Statutes § 31-300 (permitting such assessments ''[i]n cases where, through the fault or neglect of the employer *or insurer*, adjustments of compensation have been unduly delayed, or where through such fault or neglect, payments have been unduly delayed'' [emphasis added]). Indeed, such assessments are ''include[d] in the [commissioner's] award . . . .'' General Statutes § 31-300. Therefore, policies issued by such insurers necessarily would cover assessments issued under § 31-300. See, e.g., *Imbrogno* v. *Stamford Hospital*, 28 Conn. App. 113, 125–26, 612 A.2d 82 (remanding case for further award of interest pursuant to § 31-300 on medical bills for which commissioner found payment by defendant employer and defendant insurer unduly delayed), cert. denied, 223 Conn. 920, 615 A.2d 507 (1992). Thus, unlike other insurance policies, the legislature had mandated that workers' compensation policies be coextensive with the Workers' Compensation Act.

Indeed, in a 1993 decision, the workers' compensation review board (board) rejected the precise arguments advanced by the association in the present case in light of the aforementioned provisions and the particular nature of claims arising out of a workers' compensation policy. See *Versage* v. *Kurt Volk*, *Inc.*, 11 Conn. Workers' Comp. Rev. Op. 253 (1993). The association had claimed in that case that the guaranty act precluded an award of interest under the Workers' Compensation Act for delayed payment because the interest was not a covered claim and was barred by the immunity provision. Id., 258. In rejecting the first contention, the board persuasively explained: ''The [g]uaranty [a]ct's definition of a 'covered claim' is important to understanding the obligations of [the association] under the [guaranty] [a]ct. For purposes of this case, a 'covered claim' is 'an unpaid claim . . . which arises out of and is within the coverage and subject to the applicable limits of an insurance policy . . . issued by an [insolvent] insurer. . . .' General Statutes [§] 38a-838 (6). [The association] argues that the commissioner's award of interest does not arise out of or within the coverage of the workers' compensation insurance policy between the respondent-employer and the insolvent insurer. Instead, the interest award, according to [the association], arose by way of the workers' compensation statute. We reject this narrow reading of the [g]uaranty [a]ct.

''The [g]uaranty [a]ct's definition of 'covered claim' must be understood in the context of the statutes governing the underlying insurance policies [which] it pro-

tects. See *Connecticut Insurance Guaranty Association* v. *Union Carbide Corporation*, 217 Conn. 371, 378–79 [585 A.2d 1216] (1991). With regard to workers' compensation insurance policies, we must examine the requirements of General Statutes [§] 31-287. 'No policy of insurance against liability under [the Workers' Compensation Act] . . . shall be made unless the same covers the entire liability of the employer thereunder. . . .' General Statutes § 31-287. In light of this requirement that workers' compensation insurance cover an employer's *entire liability* under the [Workers' Compensation Act], *there can be no distinction between a compensation award which arises out of a workers' compensation policy and one that arises out of the workers' compensation statute*. See *Plainville* v. *Travelers Indemnity Co.*, 178 Conn. 664, 674 [425 A.2d 131] (1979). By virtue of [§] 31-287, *they are necessarily one and the same*."[3] (Emphasis altered.) *Versage* v. *Kurt Volk, Inc.*, supra, 11 Conn. Workers' Comp. Rev. Op. 258.

In rejecting the association's immunity argument in *Versage*, the board also examined the limited case law from other jurisdictions and reasoned that the guaranty act's immunity provision is intended to bar tort actions or statutory actions for interest and fees for untimely payment of claims, but not claims arising under a workers' compensation policy itself.[4] Id., 260. The board noted that a contrary interpretation would thwart the legislative policies underlying the Workers' Compensation Act. Id., 261. It therefore reasoned that "the 'covered claim' and immunity provisions must be read together." Id., 260. In other words, the board determined that a covered claim is not barred by the immunity provision. The assessment of interest for delayed payment of a workers' compensation claim, therefore, differs from statutory or common-law penalties for delayed payment of other types of claims because the former is covered under, and arises out of, the policy itself, which, by law, is coextensive with liability under the Workers' Compensation Act, not some source external to the policy. See *Plainville* v. *Travelers Indemnity Co.*, supra, 178 Conn. 674.

The rationale for allowing the commissioner to assess interest and attorney's fees against the association for its unduly delayed payment of workers' compensation benefits while the association may not be liable for its delayed payment of other types of insurance benefits may be explained not only by the statutory mandates of the Workers' Compensation Act but also by the history of the treatment of claims against insolvent workers' compensation insurers. For twelve years preceding the enactment of the guaranty act in 1971; see Public Acts 1971, No. 466; the Workers' Compensation Act provided a mechanism, through the second injury fund, to allow workers to recover for awards made against insolvent workers' compensation insurers. See Public Acts 1959, No. 580, §§ 12, 13 (renaming second injury

fund "the second injury and compensation assurance fund" and making fund responsible for covering workers' compensation awards against insolvent insurers).[5] The subsequent enactment of the guaranty act created a similar mechanism for claims against other types of insolvent insurers. Although the guaranty act included workers' compensation insurers, because that coverage was duplicative of the coverage provided under the Workers' Compensation Act, for the first fifteen years after the enactment of the guaranty act, the second injury fund continued to pay claims against insolvent workers' compensation insurers. Responsibility for such claims finally was transferred to the association through a 1986 amendment to the Workers' Compensation Act. See Public Acts 1986, No. 86-35, § 1 (b);[6] see also 29 H.R. Proc., Pt. 3, 1986 Sess., p. 845, remarks of Representative Francis X. O'Neill, Jr.[7] Thus, differential treatment of workers' compensation claims under the guaranty act arises from the differences in both the legislative mandate and the historical treatment of such claims.

In sum, interest and attorney's fees assessed because of the unduly delayed payment of workers' compensation benefits arise out of the Workers' Compensation Act. The association is obligated to pay the full amount of any claim arising out of a workers' compensation policy, which is coextensive with the Workers' Compensation Act. The majority rejects this conclusion, however, by reasoning that, because the Workers' Compensation Act mandates that the policy cover the full extent of the *employer's* liability, but does not expressly impose that mandate with respect to the *insurer's* liability, and because the association is assuming the insurer's liability, the association cannot be deemed responsible to the full extent of liability under the Workers' Compensation Act. This logic contravenes both the Workers' Compensation Act and basic principles of insurance law. Section 31-287 of the Workers' Compensation Act makes clear that the insurer steps in the shoes of the employer and is directly obligated to the employee to the same extent as the employer. That section provides in relevant part: "No policy of insurance against liability under this chapter, except as provided in section 31-284, shall be made unless the same covers the entire liability of the employer thereunder *and contains an agreement by the insurer that, as between the employee and the insurer*, notice or knowledge of the occurrence of injury by the insured shall be deemed notice or knowledge by the insurer, that jurisdiction of the insured for the purposes of this chapter shall be jurisdiction of the insurer and *the insurer shall in all things be bound by and subject to the findings, awards and judgments rendered against such insured; and also that, if the insured becomes insolvent or is discharged in bankruptcy during the period that the policy is in operation . . . an*

injured employee or other person entitled to compensation under the provisions of this chapter may enforce his claim to compensation against the insurer to the same extent that the insured could have enforced his claim against such insurer had he paid compensation." (Emphasis added.) General Statutes § 31-287. This identity of interest between the insurer and the insured employer under the policy in relation to the employee is a bedrock principle of workers' compensation. See, e.g., General Statutes § 31-279 (c) (1) ("[a]ny employer or any insurer acting on behalf of an employer, may establish a plan, subject to the approval of the chairman of the Workers' Compensation Commission under subsection [d] of this section, for the provision of medical care that the employer provides for treatment of any injury or illness under this chapter"); General Statutes § 31-288 (b) (1) ("[w]henever through the fault or neglect of an employer or insurer, the adjustment or payment of compensation due under this chapter is unduly delayed, such employer or insurer may be assessed by the commissioner hearing the claim a civil penalty of not more than one thousand dollars for each such case of delay, to be paid to the claimant"); General Statutes § 31-294d (a) (1) ("[t]he employer, any insurer acting on behalf of the employer, or any other entity acting on behalf of the employer or insurer shall be responsible for paying the cost of such prescription drugs [for an injured employee] directly to the provider"); General Statutes § 31-299b ("[i]f an employee suffers an injury or disease for which compensation is found by the commissioner to be payable according to the provisions of this chapter, the employer who last employed the claimant prior to the filing of the claim, or the employer's insurer, shall be initially liable for the payment of such compensation"). Indeed, where an employer chooses to self-insure rather than obtain coverage through a private insurance carrier; see General Statutes § 31-345; the insured and the insurer are, in fact, one in the same.

Moreover, as a general matter, if one were to extend the majority's logic to other insurance policies covered by the guaranty act, there would be no covered claims for which the association would be liable because no insurance policy treats the insurer as the insured (in the present case, the employer). By issuing a policy, an insurer becomes liable to the full extent to which it obligates itself under the policy. The difference between other types of insurers and workers' compensation insurers, of course, is that the former are not obligated by law to cover penalties for the unduly delayed payment of benefits. Therefore, I would affirm the decision of the board in the present case ordering the association to pay the assessment of interest and attorney's fees.

Accordingly, I respectfully dissent.

[1] General Statutes § 38a-850 provides: "There shall be no liability on the part of and no cause of action of any nature shall arise against any member

insurer, said association or its agents or employees, the board of directors, or any person serving as an alternate or substitute representative of any director or the commissioner or his representatives for any action taken or any failure to act by them in the performance of their powers and duties under sections 38a-836 to 38a-853, inclusive."

[2] Therefore, the majority's statement that "[t]here is no evidence in the record that the insurance policy in the present case included an obligation on the part of the insurer to pay statutory penalties and attorney's fees in the event that it caused undue delay in the processing or payment of a claim," presupposes that workers' compensation insurers are issuing policies in violation of a legislative mandate. I assume, in the absence of evidence to the contrary, that workers' compensation insurers will not act contrary to their legal obligations.

[3] Perhaps because *Versage* is not of recent vintage, the board in the present case overlooked this precedent. There is no indication in the board's subsequent opinions that it has disavowed this reasoning and, indeed, there would be no basis to do so.

[4] I note that there is little case law from other jurisdictions specifically addressing whether an assessment of interest and/or attorney's fees under a workers' compensation scheme is barred by immunity provisions of a guaranty act. There is a split of authority among those jurisdictions. Compare *Callaghan* v. *Rhode Island Occupational Information Coordinating Committee/Industry Educational Council of Labor*, 704 A.2d 740, 747 (R.I. 1997) (unanimous court concluding that immunity provision does not apply) with *Mosley* v. *Industrial Claim Appeals Office*, 119 P.3d 576, 579 (Colo. App. 2005) (three judge panel concluding that immunity provision applies), cert. denied sub nom. *Mosley* v. *Colorado Ins. Guaranty Assn.*, Docket No. 05SC343, 2005 Colo. LEXIS 736 (Colo. August 22, 2005), and *Property & Casualty Ins. Guaranty Corp.* v. *Yanni*, 397 Md. 474, 500, 919 A.2d 1 (2007) (five justices concluding, with two justices dissenting, that immunity provision applies).

[5] Number 580, § 13, of the 1959 Public Acts, later codified at General Statutes § 31-355, provided in relevant part: "When an award of compensation shall have been made under the provisions of chapter 566 of the general statutes [the Workers' Compensation Act] against an employer who has failed to comply with the provisions of said chapter or who is insolvent or whose insurer is insolvent, such payments shall be made and such compensation provided from the second injury and compensation assurance fund . . . ."

[6] Number 86-35, § 1 (b), of the 1986 Public Acts, later codified at General Statutes § 31-355 (e), provided: "Notwithstanding the provisions of subsection (a) of this section, whenever the employer's insurer has been determined to be insolvent, as defined in section 38-275, such payments shall be the obligation of the [association] pursuant to the provisions of chapter 687."

[7] Representative O'Neill explained: "This particular bill merely states that the—in the past, [the association] when an insurance company that had been paying mon[eys] for a second injury premium-type situation, when it went defunct in this particular state, the [s]econd [i]njury [f]und would pick up that payment. Even though [the association] would guarantee those particular funds. This bill states that the first person to actually pay the funds will be [the association]. And it will no longer will be the [s]econd [i]njury [f]und." 29 H.R. Proc., supra, p. 845.