



RA&MCO QUARTERLY The Design and Construction Newsletter

A publication of RA&MCO Insurance Services

Fall Quarter 2001 Volume 19, Issue 4

Construction Site Safety Liability

Worker safety on construction sites is a matter of great public interest, particularly because the nature of construction is such that it includes many activities involving inherent risk of physical injury. These would include manual lifting of heavy materials and tools, working from heights, use of combustible and corrosive materials, operation of machinery, falling objects and much more.

Effective safety practices are mandated by many governmental regulatory agencies and are routinely practiced by employers and others involved in or responsible for worker's health and well being. This is supported by the availability of Worker's Compensation insurance benefits, regardless of fault, to provide medical expense and loss of income benefits for workers injured on the job. These benefits typically preclude pursuing the employer for recovery of damages based upon tortious liability, absent the latter's egregious injurious conduct, but they are also limited in amount to the point where an injured worker may feel compelled to pursue claims against third parties that may be culpably liable for his/her injuries.

Under United States law, responsibility for construction site injuries falls upon several, and frequently many, participants in the construction process, including the injured party's employer, other contractors on the site, the site/project owner, equipment suppliers and distributors, public officials and design professionals. In keeping with the purpose of this newsletter, we shall highlight the most important basic principles involved in this otherwise complex (and sometimes convoluted) topic for the benefit of its readers.

In brief, the most single important principle in determining legal liability for construction site worker injury is that it is based upon the respective project participant's extent of control of the project site and the activities performed upon it. With this in mind, it becomes apparent that the main participant in construction that is exposed to worker injury claims is the contractor or builder in that, in effect, it assumes constructive possession and control of the site premises from its owner. This is further evident in the contractual duties assumed by the contractor which includes responsibility for construction means, methods, procedures, sequences, techniques and site safety. By stark contrast, however, the design and consulting professionals contractually disclaim responsibility for such. This coupled with a much lesser presence on the site will generally be sufficient to avoid responsibility, unless such professionals by their actions effectively undertake a direct role in site control, e.g., reserving the right to stop construction or to otherwise supervise the contractor's day-to-day activities. This is particularly true in undertaking to enforce safety practices, even gratuitously, though not required by contract so that at least a factual issue may be

presented as to safety responsibility if a subsequent claim is made.

A site owner may have safety responsibilities based upon its common law duties as a premises owner to disclose dangerous conditions to users of the premises, even though the contractor assumes a high degree of control, per above. Co-workers and material suppliers may incur tortious liability on the basis of negligence and product liability as well.

While the foregoing are good and generally reliable guidelines in dealing with or allocating risk for a site responsibility, there are variations and interpretation of these principles from one State to another. Many will make a distinction where one of the parties, such as an engineer and architect, may not otherwise have a duty regarding safety but where it admittedly observes a dangerous condition and fails to act in some fashion toward protecting workers on the site. One State, for example, New Jersey in the Carvalho case, held that an engineer had site safety responsibility when it had actual knowledge of a dangerous condition but also found that its day-to-day presence on the site involved it sufficiently in the construction process so as to create a duty toward an injured worker. One can see, therefore, that it is wise to become familiar with the particular prevailing view in one's own State.

Coming Next Quarter: "Sick Building Syndrome"

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RA&MCO Insurance Services
2300 Clayton Rd, Suite 600
Concord, CA 94520-2142
www.ramco-ins.com
info@ramco-ins.com



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