

Construction Site Accidents

Motor Vehicles & Mechanized Equipment



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# TABLE OF CONTENTS

I. Lawyer Biography.....	3
II. How to Contact the Firm.....	3
III. Construction Site Accidents.....	4
1. Industry Background.....	4
2. Statutory Duty.....	4
3. OSHA Regulations   Motor Vehicles & Mechanized Equipment.....	5
A. Equipment.....	5
B. Motor Vehicles.....	6
C. Material Handling Equipment.....	7
D. Site Clearing.....	9
V. Case Questionnaire.....	10

## **I. LAWYER BIOGRAPHY**

Jules Zacher has practiced law since 1974 in state court in Pennsylvania and federal court in Pennsylvania, Florida, and Maryland.

Mr. Zacher received his law degree at Temple University in 1974, as well as a masters degree in economics from Temple in 1970. Mr. Zacher has taken non-degree course work at Princeton University, Woodrow Wilson School of Public and International Affairs. He received his undergraduate degree from the University of Pittsburgh in 1964.

Mr. Zacher's legal career has included working as a trial lawyer in one of the premier personal injury law firms in the nation prior to starting his own firm in 1982. He has litigated construction site cases including a welder performing work on a bridge who was electrocuted, a concrete worker who was seriously injured at an oil storage tank, and a carpenter who received serious injuries while working at a home construction site. He has been active in community affairs in the Grays Ferry area of Philadelphia. Many of the cases he has tried have involved numerous defendants and complex issues of facts and law.

Mr. Zacher is a member of the Philadelphia Bar Association, and the Philadelphia Trial Lawyers Association. He is admitted to practice law in Pennsylvania and the United States District Court of the Eastern District of Pennsylvania.

## **II. HOW TO CONTACT THE FIRM**

Jules Zacher, P.C. is a law firm incorporated as a professional corporation with offices located at 1601 Walnut Street, Suite 707, Philadelphia, PA 19102. Its phone number is 215-988-0160; its fax number is 215-988-0169; and its e-mail address is [zacherlaw@aol.com](mailto:zacherlaw@aol.com). The law firm has two Websites: [www.juleszacher.com](http://www.juleszacher.com) and [www.legionnairelawyer.com](http://www.legionnairelawyer.com).

### **III. CONSTRUCTION SITE ACCIDENTS**

#### **1. Industry Background**

Even though the construction industry has 5% of the workforce, it has 21% of the workplace fatalities in the United States.<sup>1</sup> Ranking the number of fatalities on construction sites shows that falls result in the highest number of deaths, with transportation accidents second, and contact with objects and equipment third. Roughly 30% of these fatalities are caused by falls from elevated positions.

According to US government statistics, approximately 1 in 10 injuries on the job occur on construction sites.<sup>2</sup> In 2005 this accounted for approximately 408,000 injuries, a number which has doubled in less than ten years (In 1997 there were 189,839 on-the-job injuries). In 2005, 1186 construction workers were killed at work—representing nearly half of the 2,452 total deaths in the entire private goods producing sector. As the head of the trauma unit of Philadelphia hospital, which treats one construction worker a month for serious injury, said, “Construction sites are extremely lethal areas” (Bartholomew Tortella as cited in the *Philadelphia Inquirer*, 2/11/00, pg. 1).

Most construction sites involve numerous companies at various levels, with the owner of the building or the developer using an architect and engineer to draw up the construction site plans. The owner or developer will also contract with a prime or general contractor to do the actual construction. If the prime does not do construction work, it is considered a construction manager. The prime usually contracts with subcontractors to do such work as demolition, excavation, foundations, steel erection, electrical and concrete work.

#### **2. Statutory Duty**

Any analysis used to establish whether an injured person can collect damages from any potential defendant in a workplace accident must start with the legal duty the defendant had to the worker. The source of legal duty can be a law and any regulations stemming from the law, such as the Occupational Safety and Health Act (OSHA), passed by the U.S. Congress in 1970.

The standards set up in OSHA dealing with construction, as an example, hold the prime contractor responsible for enforcement of OSHA standards regardless of any contractual agreement between the prime and sub-contractors. The non-delegable duty of the prime contractor extends to all employees on construction sites regardless of who employs them. It can occur even if the general contractor has no employees himself on

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<sup>1</sup> *Fatal occupational injuries by event or exposure and major private industry sector, All United States, 2005*. U.S. Department of Labor, Bureau of Labor Statistics, in cooperation with State and Federal agencies, Census of Fatal Occupational Injuries.

<sup>2</sup> *Workplace Injuries and Illnesses in 2006*, U.S. Department of Labor, Bureau of Labor Statistics.

the jobsite<sup>3</sup>. Further, the OSHRC (Occupational Safety and Health Review Commission) has ruled that any employer, regardless of what level that may be on a multi-tier level construction site, who can get rid of a hazardous condition violative of OSHA regulations must do so even though only employees of other companies are at the worksite.

The employer, however, will be let off the hook from violating OSHA standards if the employee is unforeseeably disobeying the instructions of the employer. In order to show that the employee disobeyed instructions it is necessary for the employer to prove that it has work rules established to prevent a violation which has been connected to the employee, it has made efforts to uncover any violations, and it has enforced its rules when any violations which were discovered.<sup>4</sup>

Prior OSHA violations by the same company are available from the regional OSHA office. Any prior citations for the same type of safety violation would go a long way towards establishing notice to the company.

Owners typically have progress photos taken of the jobsite to refute any claims which may be brought against a job for delay. These same photos can be used to establish OSHA violations on the jobsite prior to the accident happening.

### **3. OSHA Regulations | Motor Vehicles & Mechanized Equipment**

#### **A. Equipment<sup>5</sup>**

These OSHA regulations provide for how motor vehicles and mechanized equipment are to be used on the jobsite. A summary of the regulations follow:

- Visibility standards for unattended equipment require that the location of equipment be appropriately identifiable by lights or reflectors.
- A safety tire rack, cage, or equivalent protection must be provided and used when inflating, mounting, or dismounting tires installed on split rims, or rims equipped with locking rings or similar devices.
- The suspension of heavy machinery or equipment requires substantial blocking or cribbing to prevent falling or shifting. Furthermore, bulldozer and scraper blades, end-loader buckets, dump bodies, and similar equipment, must be either fully lowered or blocked during repairs or when not in use; and all controls must

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<sup>3</sup> Anning v. Johnson Co., 4 OSHRC (BNA) 1195, 1994 (1976)

<sup>4</sup> A.P. O'Horo Co., Inc. v. Secretary of Labor, OSHRC Docket No. 85-369, 20 (1989)

<sup>5</sup> U.S. Department of Labor. Occupational Safety & Health Administration. Regulations; 29 CFR 1926.600

be in a neutral position, with the motors stopped and brakes set, unless work being performed requires otherwise.

- Whenever equipment is parked, the parking brake must be set; wheels must be chocked with parking brake set when parked on an incline.
- All cab glass must be safety glass, or equivalent, that introduces no visible distortion affecting the safe operation of machinery.

## **B. Motor Vehicles (Off-highway jobsites)<sup>6</sup>**

These OSHA regulations indicate how motorized vehicles are to be used at jobsites off the highway. A summary of the regulations follow:

- Service, emergency, parking brake systems are required and must be maintained in operable condition.
- Whenever visibility conditions warrant additional light, vehicles must be equipped with at least two headlights and two taillights in operable condition.
- Vehicles must have brake lights in operable condition regardless of light conditions.
- Vehicles must be equipped with an adequate audible warning device at the operator's station and in an operable condition.
- Motor vehicle equipment with an obstructed view to the rear is prohibited for use unless: equipped with a reverse signal alarm audible above the surrounding noise level; or backed up only when an observer signals that it is safe to do so.
- Vehicles with cabs require windshields and powered wipers. Cracked and broken glass shall be replaced. Vehicles operating under fogging or frosting conditions must be equipped with operable defogging or defrosting devices.
- Pay loaded haulage vehicles require a cab shield and/or canopy adequate to protect the operator from shifting or falling materials.
- Tools and material must be secured to prevent movement when transported in the same compartment with employees.
- Vehicles transporting employees require adequate, firmly secured seats for the total number of employees to be carried; and adequate seat belts and anchorages must be installed in all motor vehicles.

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<sup>6</sup> U.S. Department of Labor. Occupational Safety & Health Administration. Regulations; 29 CFR 1926.601

- Trucks with dump bodies must have a permanently attached, positive means of support, with locking capabilities to prevent accidental lowering of the body.
- Operating levers controlling hoisting or dumping devices on haulage bodies require some latch or device to prevent accidental starting or tripping of the mechanism.
- Trip handles for tailgates of dump trucks must be so arranged that, in dumping, the operator will be in the clear.
- Fenders are required on all rubber-tired motor vehicle equipment. Mud flaps may be used in lieu of fenders whenever motor vehicle equipment is not designed for fenders.
- All vehicles in use must be checked at the beginning of each shift to assure that the following parts, equipment, and accessories are in safe operating condition and free of apparent damage: Service brakes, parking system (hand brake), and emergency stopping system (brakes); Tires; horn; steering mechanism; coupling devices; seat belts; operating controls; and safety devices. All defects must be corrected before the vehicle is placed in service. These requirements also apply to equipment such as lights, reflectors, windshield wipers, defrosters, fire extinguishers, etc., where such equipment is necessary.

### **C. Material Handling Equipment<sup>7</sup>**

These OSHA regulations provide for how material handling equipment is to be used on the jobsite. A summary of the regulations follow:

- These rules apply to the following types of earthmoving equipment: scrapers, loaders, crawler or wheel tractors, bulldozers, off-highway trucks, graders, agricultural and industrial tractors, and similar equipment.
- *Seat Belts.* Seat belts must be provided on all equipment covered by the above paragraph and are required to meet the requirements of the Society of Automotive Engineers. They need not be provided for equipment that is designed only for standup operation, nor for equipment which does not have roll-over protective structure (ROPS) or adequate canopy protection.
- *Access Roadways and Grades.* For permissible use, access roadways or grades must be constructed and maintained to accommodate safely the movement of the equipment and vehicles involved. Every emergency access ramp and berm used by an employer must be constructed to restrain and control runaway vehicles.

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<sup>7</sup> U.S. Department of Labor. Occupational Safety & Health Administration. Regulations; 29 CFR 1926.602

- *Brakes.* All earthmoving equipment must have a service braking system capable of stopping and holding the equipment fully loaded, as specified by the Society of Automotive Engineers. Brake systems for self-propelled rubber-tired off-highway equipment manufactured after January 1, 1972 is required to meet the applicable minimum performance criteria set forth in the Society of Automotive Engineers Recommended Practices.
- *Fenders.* Pneumatic-tired, earth-moving haulage equipment (trucks, scrapers, tractors, and trailing units) whose maximum speed exceeds 15 miles per hour, must be equipped with fenders on all wheels to meet the requirements of Society of Automotive Engineers. (An employer may, of course, at any time seek to show that the uncovered wheels present no hazard to personnel from flying materials).
- *Audible Alarms.* All bidirectional machines, such as rollers, compacters, front-end loaders, bulldozers, and similar equipment, require a horn that is maintained in an operative condition, is distinguishable from the surrounding noise level, and can be operated as needed when the machine is moving in either direction. Earthmoving or compacting equipment with an obstructed rear view cannot be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level or an employee signals that it is safe to do so.
- *Scissor Points.* Scissor points on all front-end loaders constitute a hazard to the operator during normal operation and shall be guarded.
- *Lifting and Hauling Equipment.*

Lift trucks, stackers, etc., shall have the rated capacity clearly posted on the vehicle so as to be clearly visible to the operator. These ratings shall not be exceeded.

No modifications or additions which affect the capacity or safe operation of the equipment shall be made without the manufacturer's written approval. If such modifications or changes are made, the capacity, operation, and maintenance instruction plates, tags, or decals shall be changed accordingly. In no case shall the original safety factor of the equipment be reduced.

If a load is lifted by two or more trucks working in unison, the proportion of the total load carried by any one truck shall not exceed its capacity.

Steering or spinner knobs shall not be attached to the steering wheel unless the steering mechanism is of a type that prevents road reactions from causing the steering handwheel to spin. The steering knob shall be mounted within the periphery of the wheel.

All high lift rider industrial trucks shall be equipped with overhead guards which meet the configuration and structural requirements as defined in paragraph 421 of American National Standards Institute B56.1-1969, Safety Standards for Powered Industrial Trucks.

All industrial trucks in use shall meet the applicable requirements of design, construction, stability, inspection, testing, maintenance, and operation, as defined in American National Standards Institute B56.1-1969, Safety Standards for Powered Industrial Trucks.

Unauthorized personnel shall not be permitted to ride on powered industrial trucks. A safe place to ride shall be provided where riding of trucks is authorized.

Whenever a truck is equipped with vertical only, or vertical and horizontal controls elevatable with the lifting carriage or forks for lifting personnel, the following additional precautions shall be taken for the protection of personnel being elevated:

- Use of a safety platform firmly secured to the lifting carriage and/or forks.
- Means shall be provided whereby personnel on the platform can shut off power to the truck.
- Such protection from falling objects as indicated necessary by the operating conditions shall be provided.

#### **D. Site Clearing<sup>8</sup>**

These OSHA regulations show how site clearing is to be done at the jobsite. A summary of the regulations follow:

- Employees engaged in site clearing must be protected from hazards and toxic plants and suitably instructed in the available first aid treatment.
- Equipment used in site clearing must have rollover guards; and rider-operator equipment must have overhead and rear canopy guards that meet the following requirements: First, the overhead covering must not be less than 1/8-inch plate or 1/4-inch woven wire mesh with openings no greater than 1-inch. Second, the rear canopy opening must be covered with a minimum 1/4-inch woven wire mesh with openings no greater than 1 inch.

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<sup>8</sup> U.S. Department of Labor. Occupational Safety & Health Administration. Regulations; 29 CFR 1926.604

## V. CASE QUESTIONNAIRE

### Do I Have A Case?

Provide the details and we will make a free, preliminary determination.

**Your Name:**

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**Address:**

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**City:**

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**State:**

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**Zip Code:**

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**E-mail:**

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**Phone Number:**

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**Enter your question or case details here:**

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I understand that my request and my response thereto does not form an attorney-client relationship.