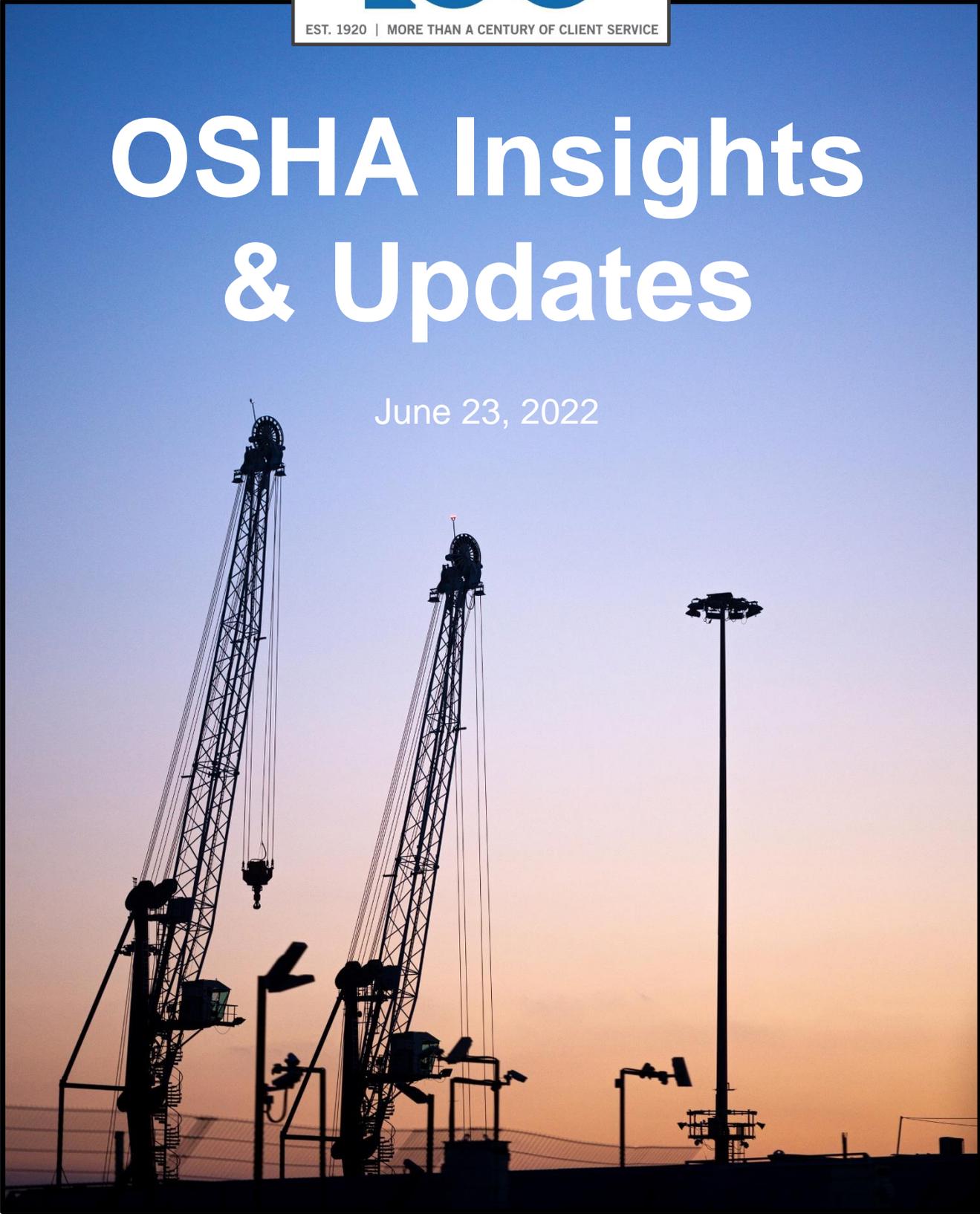




OSHA Insights & Updates

June 23, 2022



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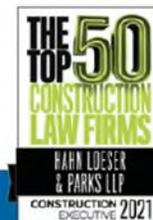


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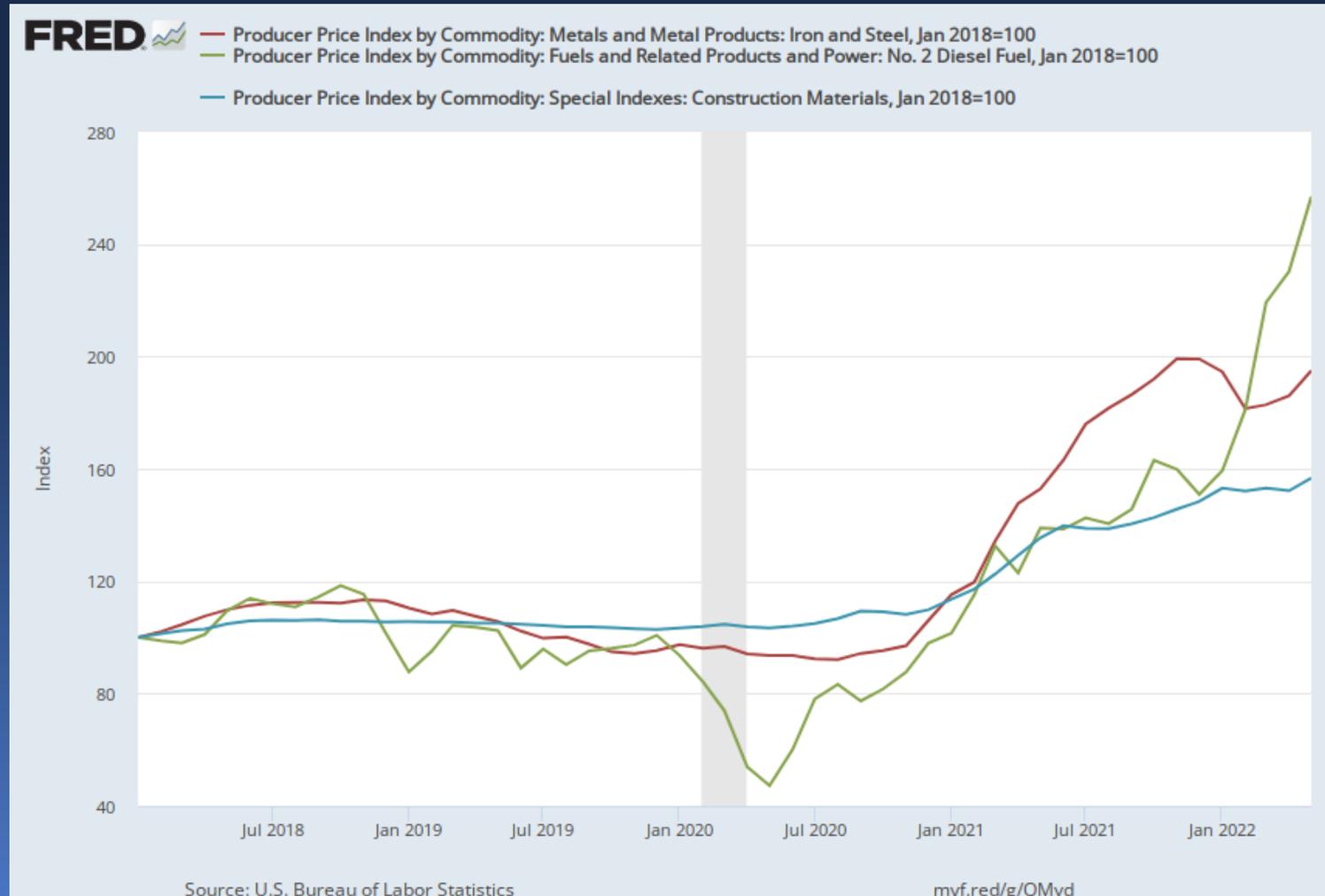
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Mitigating Risk Amidst Skyrocketing Costs Escalation and Material Shortages



Welcome!



OSHA Insights & Updates

June 23, 2022

Emerging and Novel Issues in OSHA Regulations & Enforcement



Construction Group Presenters



Rob Remington

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Co-Chair, Litigation Group



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Partner



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Associate



- **Heat**
- **Trenching & Excavation**
- **OSHA's Drone Program**
- **Infectious Disease**





- **Heat**
- **Trenching & Excavation**
- **OSHA's Drone Program**
- **Infectious Disease**



Heat – Major Focus of the Biden Administration



- Initial announcement – Heat is the leading cause of death among all weather related phenomenon.
- 18 of the last 19 years were the hottest on record.
- Climate change is increasing the frequency and intensity of extreme heat events.

Heat – By the Numbers



- Exposure to excessive heat has killed *at least* 907 U.S. workers from 1992-2019 – an average of 32 annual fatalities.
- However, in 2019, there were 43 heat related workplace fatalities.



- Tim Barber, 35-year-old otherwise healthy man, died of heat illness.
- He was working on the Genesee River Bridge Project in New York.
- Worked his first day and woke up “not feeling quite right.”
- Died from heat exposure after working just two days.



- October 27, 2021 – Advance Notice of Proposed Rulemaking.
- January 26, 2022 – Comment period closed.
- Next Steps – Rule Development.

Heat – Stated Desire of OSHA – 8 Things



- Develop a written heat illness prevention plan.
- Provide training to managers and workers on the signs and symptoms of heat illness.
- Ensure acclimatization.
- Provide water.

Heat – Stated Desire of OSHA – 8 Things *(cont.)*



- Require rest breaks.
- Provide shade and cool rest areas.
- Monitor workers wearing face coverings.
- Implement a buddy system.

Heat – Rulemaking – When is it coming?



- Recall the silica standard.
- Rulemaking began in 1997.
- Stakeholders meetings in 1998 - 1999.
- Proposed Rule – announced August 23, 2013.
- Final Rule – March 24, 2016.
- All told – 19 years.

Heat – Rulemaking – Why Do I Care?



Heat – Same Playbook



- The final rule took years (decades?).
- This didn't stop OSHA from citing silica violations.
- Special Emphasis Program was in place since 1996.
- Major focus of every Secretary of Labor.

Heat – NEP – April 8, 2022



OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 03-00-024 **EFFECTIVE DATE:** April 8, 2022

SUBJECT: National Emphasis Program – Outdoor and Indoor Heat-Related Hazards

ABSTRACT

- Purpose:** This Instruction describes policies and procedures for implementing a National Emphasis Program (NEP) to protect employees from heat-related hazards and resulting injuries and illnesses in outdoor and indoor workplaces. This NEP expands on the agency’s ongoing heat-related illness prevention initiative and campaign by setting forth a targeted enforcement component and reiterating its compliance assistance and outreach efforts. This approach is intended to encourage early interventions by employers to prevent illnesses and deaths among workers during high heat conditions, such as working outdoors in a local area experiencing a heat wave, as announced by the National Weather Service. Early interventions include, but are not limited to, implementing water, rest, shade, training, and acclimatization procedures for new or returning employees.
- Scope:** This Instruction applies OSHA-wide.
- References:** Section 5(a)(1) of the Occupational Safety and Health Act (OSH Act), 29 U.S.C. § 654.
OSHA Instruction, CPL 02-00-164, *Field Operations Manual (FOM)*, April 14, 2020.
(See [Section III](#) for additional references.)
- Cancellations:** None.
- State Plan Impact:** Notice of Intent Required, Adoption Encouraged. Federal Program Change, Notice of Intent Required, Equivalency Required. See [Section VI](#).
- Action Offices:** OSHA Regional and Area Offices, State Plan and OSHA On-Site Consultation programs
- Originating Office:** Directorate of Enforcement Programs, Office of Health Enforcement

Emphasis
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ls and resulting

Heat – NEP – April 8, 2022



Executive Summary



U.S. I

DIRI
SUB

Purp

This Instruction describes policies and procedures for implementing a National Emphasis Program (NEP) to identify and eliminate or reduce worker exposures to occupational heat-related illnesses and injuries in general industry, construction, maritime, and agriculture. It targets specific industries expected to have the highest exposures to heat-related hazards and resulting illnesses and deaths.

Significant Changes

This is a new Instruction.

Scop...	
References:	Section 5(a)(1) of the Occu U.S.C. § 654. OSHA Instruction, CPL 02 April 14, 2020. (See Section III for addition
Cancellations:	None.
State Plan Impact:	Notice of Intent Required, , Change, Notice of Intent R VI .
Action Offices:	OSHA Regional and Area O Consultation programs
Originating Office:	Directorate of Enforcement

ABSTR

ABSTRACT-3

Heat – NEP – April 8, 2022



Executive Summary



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Significant Changes

This is a new Instruction.

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Action Offices:

Originating Of



- OSHA – Stated Goals
 - Heat inspections accounted for less than .5% of all inspections in the past five years.
 - “each Region is expected to have a fiscal year goal of **increasing their heat inspections by 100% above the baseline** of the average of fiscal years 2017 through 2021.”
 - Initiate programmed inspections in high-risk industries (see NAICS codes).

Heat - How OSHA will approach things



Table 2. Construction industries that are likely to have heat-related hazards.¹

2017 4-Digit NAICS Code	2017 NAICS Industry Sector Title
----------------------------	----------------------------------

¹ Construction inspections ([C-Target](#)) should be scheduled from a list of **construction worksites** rather than construction employers, due to the mobility of the construction industry, the transitory nature of construction worksites, and work that frequently involves more than one construction employer on the site.

Appendix A-3

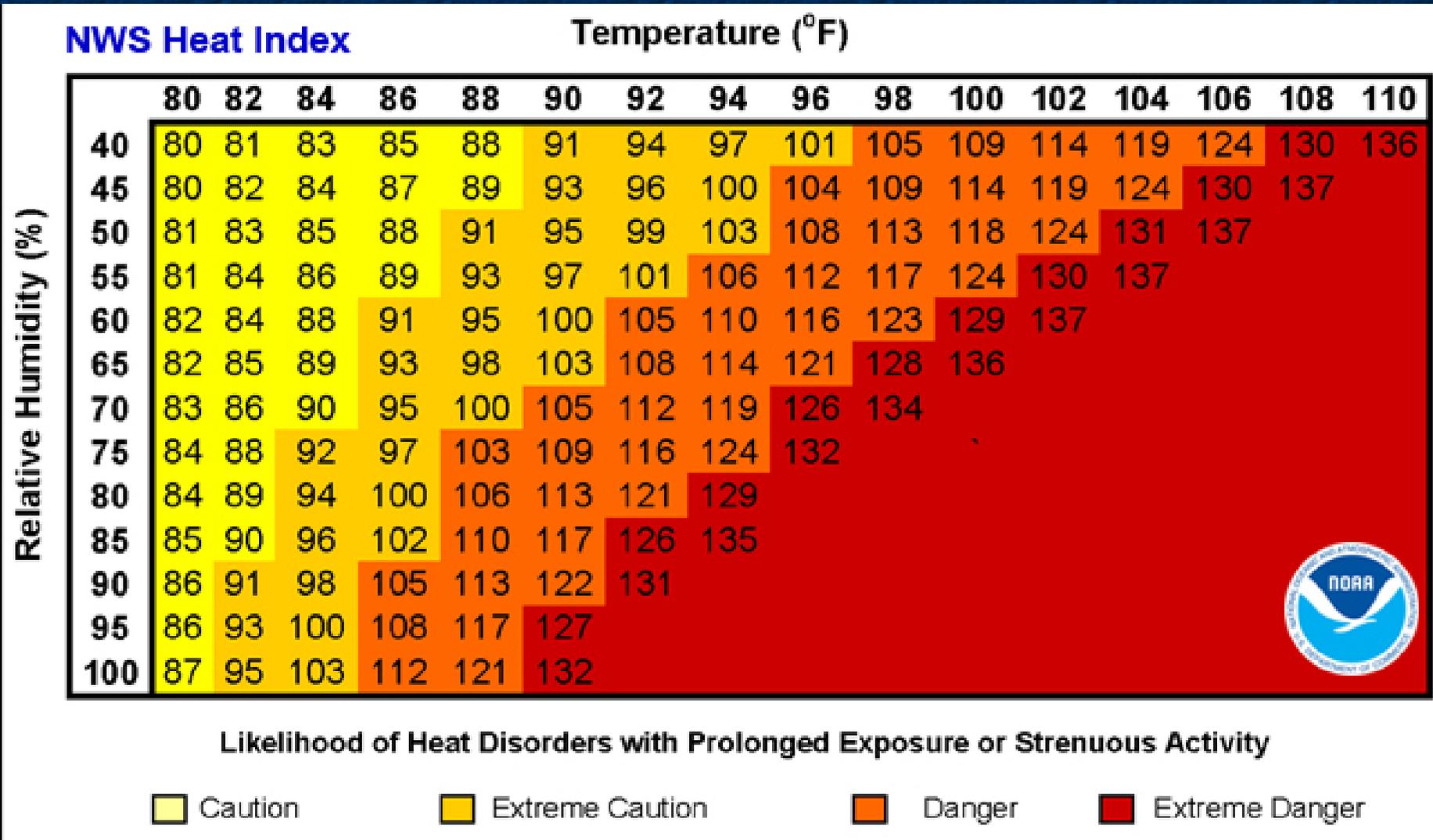
2381	Construction Contractors, not Elsewhere Classified
2382	Building Equipment Contractors
2383	Building Finishing Contractors
2389	Other Specialty Trade Contractors

¹ Construction inspections ([C-Target](#)) should be scheduled from a list of **construction worksites** rather than construction employers, due to the mobility of the construction industry, the transitory nature of construction worksites, and work that frequently involves more than one construction employer on the site.



- National Weather Service Heat Index – Four Classifications
 1. Caution (80-90 degrees HI)
 2. Extreme Caution (91-103 degrees HI)
 3. Danger (103-124 degrees HI)
 4. Extreme Danger (126 degrees HI or higher)

Heat – National Weather Service Heat Index



Heat – How OSHA Will Approach Things



- NEP focuses on a heat index of 80 degrees or higher.
 - At that point “serious occupational heat-related illnesses and injuries become more frequent.”
 - Focus is on workplaces “where unacclimatized workers are performing strenuous work.”
 - As well as workplaces where workers do not have “easy access to cool water or cool/shaded areas” or where workers are “working in direct sunlight or areas where other radiant heat sources are present.”

Heat – How OSHA Will Approach Things



- OSHA heat inspections will be added on to any other OSHA inspections.
- The NEP “encourages employers to protect workers from heat hazards by providing employee access to water, rest and shade, as well as adequate training, and to implement acclimatization procedures for new or returning employees.”

Heat – What to Expect During an Inspection



1. Review OSHA 300 Logs and 301 Incident Reports for any entries indicating heat-related illness(es);
2. Review any records of heat-related emergency room visits and/or ambulance transport, even if hospitalizations did not occur;
3. Interview workers for symptoms of headache, dizziness, fainting, dehydration, or other conditions that may indicate heat-related illnesses;

Heat – What to Expect During an Inspection



4. Determine if the employer has a heat illness and injury program addressing heat exposure;
5. Document conditions relevant to heat-related hazards; and
6. Identify activities relevant to heat-related hazards.



- What is OSHA looking for in a heat illness and injury prevention program?
 - Is there a written program?
 - How is the employer monitoring ambient temperature and exertion levels?
 - Is there easily accessible, unlimited, cool water?
 - Does the employer require additional breaks for hydration?



- What is OSHA looking for in a heat illness and injury prevention program? *(cont.)*
 - Were there scheduled rest breaks?
 - Was there access to a shaded area?
 - Did the employer provide time for acclimatization?
 - Was there a “buddy” system?
 - Are there administrative controls (e.g., earlier start, employee/job rotation) to limit heat exposure?



- What is OSHA looking for in a heat illness and injury prevention program? *(cont.)*
 - Did the employer provide training on heat illness?
 - Signs.
 - How to report it when you see it.
 - First aid.
 - How to contact emergency personnel.
 - Prevention.
 - Importance of hydration.

Heat – What Conditions is OSHA Assessing?



- Heat index and additional weather data from that day.
 - Wind speed.
 - Humidity.
 - Wet and Dry Bulb Temperatures.
 - Cloud cover.
 - Whether any Heat Advisories were issued.



- Job/Task Specific Conditions
 - Potential heat sources (working in a vehicle, direct sunlight, near a heat source such as an engine, boiler, steam line, etc.).
 - Heavy or Bulky Clothing (including PPE).
 - Workload of the specific job.
 - Duration of exposure to repeated or continuous moderate to strenuous activity.

Heat – How is OSHA Going to Cite You?



- Section 5(a)(1) – General Duty Clause*
- Miscellaneous Sanitation standards at 29 CFR §§ 1910.141, 1915.88, 1917.127, 1918.95, 1926.51, and 1928.110 require employers to provide cool potable water.
- General Construction Safety Training and Education Standards (29 CFR § 1926.21 and 29 CFR § 1926.20).



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- General Construction Safety Training and Education Standards (29 CFR § 1926.21 and 29 CFR § 1926.20).



- Section 5(a)(1) – General Duty Clause*

In all cases where the AD determines that a worksite condition exists warranting issuance of a 5(a)(1) citation for occupational exposure to the heat related hazards, the Regional Office shall follow current National Office guidance in this NEP. Heat cases proposing a 5(a)(1) are novel cases and must be submitted to the National Office following novel case procedures, until otherwise instructed.



- Section 5(a)(1) – General Duty Clause.
 - A condition or activity in the workplace presents a hazard.
 - Employer or industry recognizes the hazard.
 - Hazard is likely to cause death or serious harm.
 - There is a feasible and effective means of abatement.

Heat – Case Law on General Duty Clauses



- Sturgill Roofing (see blog post).
- USPS consolidated citations.



- **Basic Facts**

- 60-year-old temp roofing worker – MR.
- Preexisting conditions: Hepatitis C and Congestive Heart Failure.
- On site for five hours; Starting at 72 with 84% up to 82 with 51%.
- Other workers started expressing concern.
- MR collapses and transported to the hospital.
- Dies three weeks later from “complications from heat stroke.”



- Citation Reversed
 - Failed to meet prong 1 because there was no prolonged exposure and no continuous strenuous activity.
 - Failed to meet prong 4 because Sturgill had made at least some efforts to abate:
 1. Formalized work rest regime;
 2. Formalized hydration policy; and
 3. Monitoring employees.

Heat – USPS – Five Consolidated Cases



- OSHA cited the US Postal Service in five separate cases involving seven workers for temperatures ranging from 90s to 109 degrees.
- ALJ determined that the expert testimony failed to conclusively establish that any of the employees' illnesses were actually caused by heat.
- Also noted that without a standard there is no way to know when heat is “high.”



- Further found that even if the reported incidents were actually heat related, the Secretary failed to show that significant risk of harm either in likelihood of occurrence or severity of potential hazard.
- Decision Issued in July of 2020.
- Currently on appeal to the Commission (note – citations were in 2016).

Heat – General Duty Takeaways



- Significant challenges to proving a general duty violation under all prongs.
- OSHA NEP and Rulemaking is likely targeted at the notice issues (prong 1 and 2).
- Studies and information is likely targeted at the potential for death or harm (prong 3).
- Suggested abatements likely targeted at the feasible means of abatement (prong 4).

Heat – What is the Rule Going to be?



- Given all this uncertainty and the checkered history of OSHA's efforts to enforce the OSH Act for heat, what can we expect for the potential rule?



- California
 - Requires provision of water.
 - Requires access to shade whenever temps exceed 80.
 - Cool down periods.
 - Ten-minute break every two hours when temps exceed 95.
 - Acclimatization Requirements.
 - All employees observed during any “heat wave.”
 - New employees observed for fourteen days.
 - Training and Heat Illness Prevent Plans are Required.
 - Recovery Periods Must be Paid.



- Colorado

- Agricultural workers – applies when work occurs and it is forecasted to exceed 80 degrees.
- Requires providing drinking water.
- Requires shade.
- Additional triggers for added protection:
 - Daily high in excess of 95.
 - Unhealth air quality.
 - Long days or Heavy Clothing/Gear.
 - Employee is in their first four days of work.



- Oregon
 - When Temps exceed 80.
 - Shade.
 - Adequate supply of water.
 - Written plan.
 - When Temps exceed 95.
 - Increased communication with supervisors.
 - Designated contact for emergency issues.
 - Heat illness prevention work/rest cycle
 - Written plans are required for acclimatization and heat illness prevention.
 - Required Training for All Employees.



- Washington

- Outdoor Work Only, Only between May 1 and September 30 when temps are 89 degrees or higher.
 - Shade and Rest.
 - Including language appropriate training on implementation.
 - Adequate supply of water.
 - Written plan.
- When Temps exceed 100.
 - Mandatory shaded 10-minute rest every two hours for cool down.
- Additional Rulemaking is under way.

Heat – Potential Rulemaking Based on States



- Maryland and Nevada
 - Rulemaking is in process.



- What will we likely see?
 - Water and Shade are almost certain.
 - Rest breaks depending on temperature and conditions.
 - Additional breaks for hydration.
- What Issues will we see?
 - Acclimatization is a potentially substantial issue.
 - Proof that the hazard (heat) caused the injury.

Heat – What to do now?



- Develop a heat illness prevention plan.
 - Identifying heat illness, illness prevention, how to report.
- Conduct Training on the plan.
- Provide Shade and Water and Mandate Breaks.
- Buddy System for Workers.
- Administrative Controls.
- Hazard Identification Planning.



- Heat
- **Trenching & Excavation**
- OSHA's Drone Program
- Infectious Disease





- National Emphasis Program on Trenching.
- Trenching & Excavation Standard.
- Soil Classification.
- Protective Systems.
- Criminal Liability.

National Trench Safety Month



- OSHA, in collaboration with a Private Industry Association has Declared June 2022, National Trench Safety Month



- Even better, June 20-24, 2022, is Trench Safety Stand Down Week
 - Reminder to Talk Directly to your Employees and Others About Trench & Excavation Hazards and the Importance of Following all Regulations and Standards

National Emphasis Program on Trenching



- Background:

- Because of the continuing incidence of trench/excavation collapses and accompanying loss of life, the agency has determined that worksites with trenching/excavation continue to warrant an increased enforcement presence.
- As a part of the program, Compliance Safety and Health Officers shall initiate inspections whenever they observe an open trench or open excavation, regardless of whether or not a violation is readily observed.

- Inspections:

- Observations may occur during the course of CSHOs normal workday travel, while engaged in programmed or un-programmed inspections.
 - Trenching operations will also be inspected as the result of incidents, referrals, and complaints.

- National Reporting:

- All enforcement activities (inspections, complaints, and referrals) conducted under the national emphasis program will be coded “Trench” and entered into the OSHA Information System (“OIS”).
 - All consultation activities will also be coded “Trench” and entered into OIS.

Specific Excavation Requirements 29 CFR 1926.651



§ 1926.651 aims to protect employees against several types of hazards associated with excavation-related work. To that end, employers must:

- Remove or support surface encumbrances (*i.e.*, utility poles, fence lines, or trees).
- Locate and address underground utility installations (*i.e.*, sewer, telephone, fuel, electric, or water lines, and underground storage tanks).
- Provide safe structural access to and egress from excavations.
- Provide employees exposed to vehicle traffic with warning vests or other high-visibility clothing.
- Prevent employees from being underneath loads and exposed to spillage or other falling materials while vehicles are loaded/unloaded during excavation activities.
- Ensure that stop logs, chock blocks, barricades, or hand or mechanical signals are used when mobile equipment is operating adjacent to or without a clear, direct view of the edge of excavation.

Specific Excavation Requirements *(cont.)*



- Conduct atmospheric testing, and provide ventilation, and respiratory protection to prevent employee exposure to atmospheres containing less than 19.5 percent oxygen, as well as other hazardous atmospheres.
 - Require all employees entering bell-bottom pier holes or similar deep confined-footing excavations wear a harness with a lifeline and be attended to while in the hole.
- Prohibit and prevent employees from entering an excavation where water accumulated or is accumulating.
- Support adjacent structures (*i.e.*, adjoining buildings, walls, sidewalks, pavements, and other appurtenant structures) with support systems, such as shoring, bracing, or underpinning.
- Ensure all spoil piles, loose soil, or equipment that could pose a hazard by falling or rolling into the excavation is kept more than two feet from the excavation's edge.
- Ensure that a competent person is conducting inspections of the excavation prior to the start of each shift, as needed throughout the shift, after every rainstorm, or after other weather events that may increase hazards.
- Provide guardrails for walkways that cross over an excavation.

Soil Classification



- **Solid Rock:**

- Natural solid mineral matter that can be excavated with vertical sides and remain intact while exposed.

- **Type A:**

- Unconfined compressive strength of 1.5 Tons per Square Feet or greater.
- Clay, Silty clay, Clay loam, Cemented soils.



- **Type B:**

- Unconfined compressive strength greater than .5 tons per square foot but less than 1.5 tons per square foot.
- Granular soils, Gravel, Silt, Loam, or Sandy loam.
- Some previously disturbed soils, and soil that would be type A, but there are fissures or vibrations present.



- **Type C:**

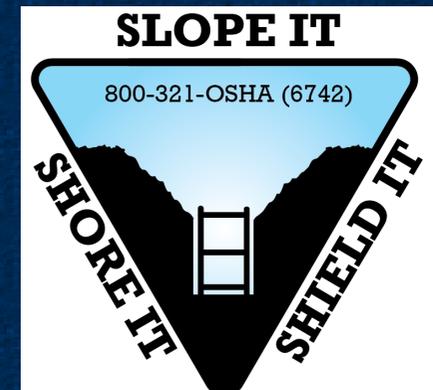
- Unconfined compressive strength of .5 tons per square foot or less.
- Granular soils, Gravel, Sand, and Sandy loam.
- Submerged soil or soil with water freely seeping through, and previously disturbed soil.



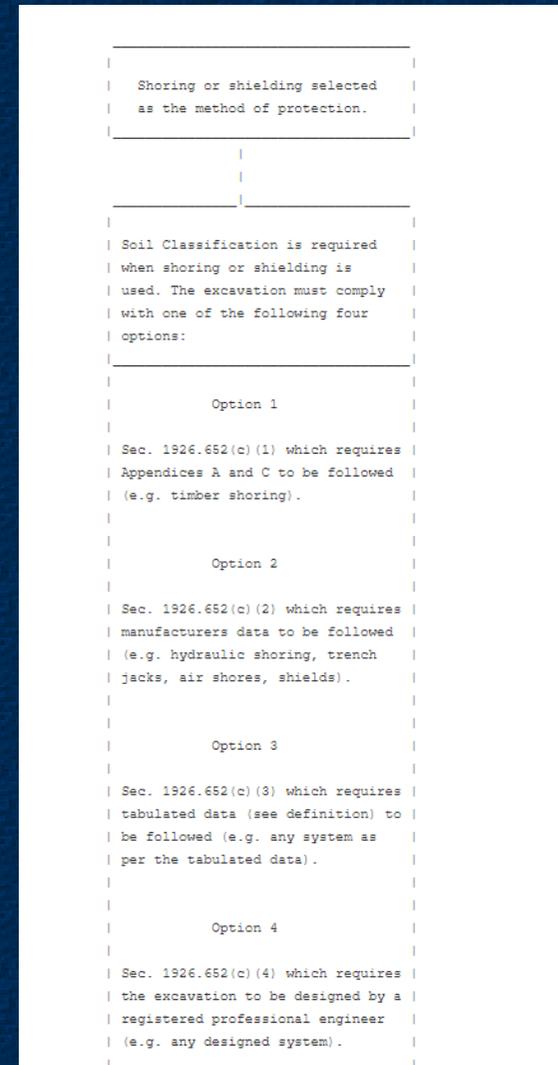
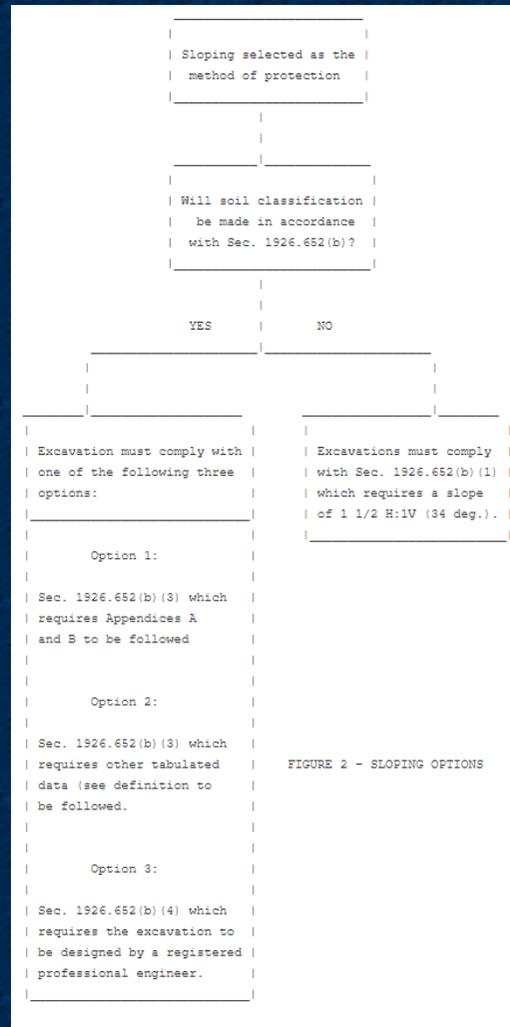
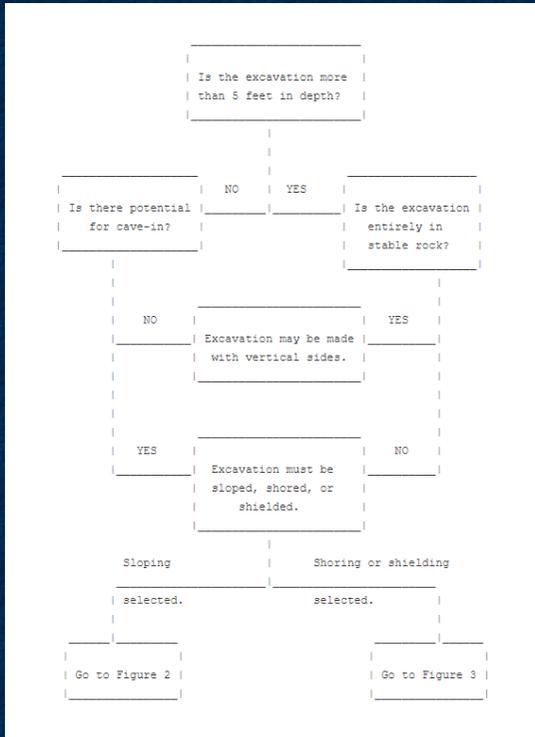
Protective Systems 29 CFR 1926.652



- Sloping-1926.652(b)
- Benching-1926.652(b)
- Shoring-1926.652(c)
- Shielding-1926.652(c)



Protective Systems 1926 Subpart P App F

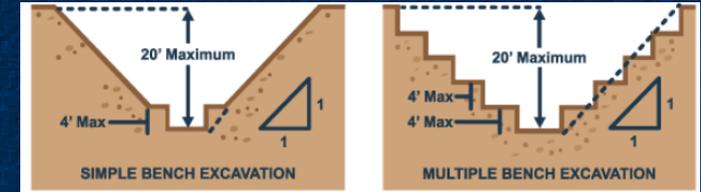


Sloping & Benching 29 CFR 1926.652(b)



- **Design Options**

- **Sloped 1 ½ H: 1V-** at an angle not less than 34 degrees.
- **Use appendices A and B of 29 CFR 1926 Subpart P.**
- **Other Tabulated Data.**
- **Design by Registered Professional Engineer.**



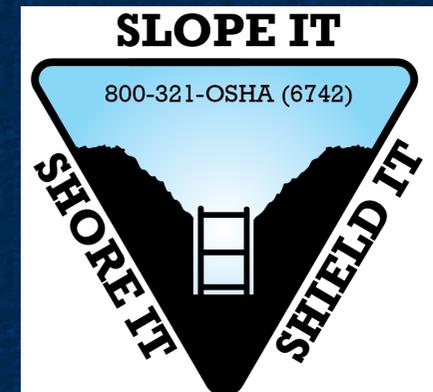
Soil Type: Stable Rock Max. Slope (H:V) Vertical Slope Angle (Degree): 90	Soil Type: Type A Max. Slope (H:V) 3:4 : 1 Slope Angle (Degree): 53
Soil Type: Type B Max. Slope (H:V) 1 : 1 Slope Angle (Degree): 45	Soil Type: Type C Max. Slope (H:V) 1-1/2 : 1 Slope Angle (Degree): 34



Support and Shield Systems 29 CFR 1926.652(c)

- **Design Options**

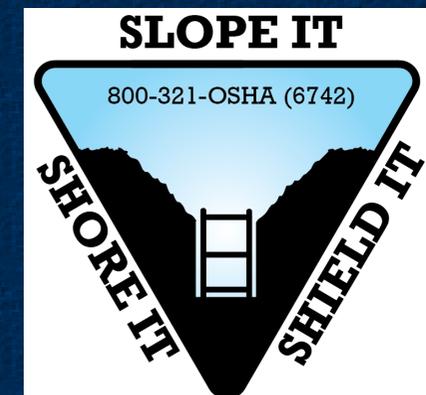
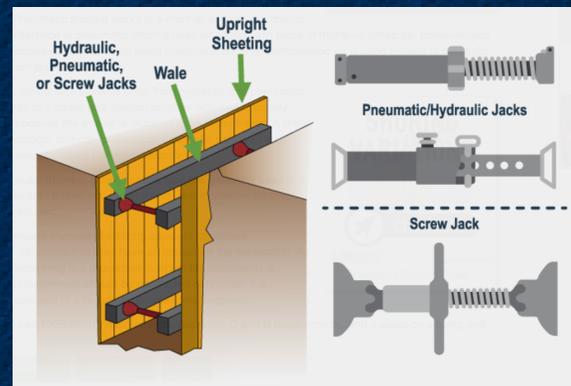
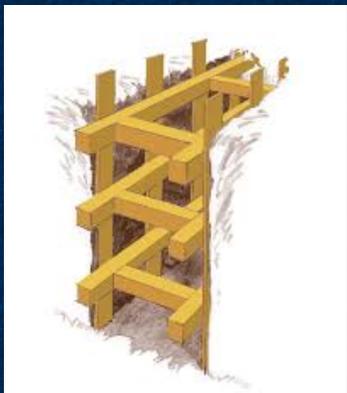
- Use appendices A, C, and D of 29 CFR 1926 Subpart P (designs for timber and aluminum shoring).
- Design based on manufacturer data.
- Other Tabulated Data.
- Design by Registered Professional Engineer.



Shoring 29 CFR 1926.652(c)



- Shoring-1926.652(c)
 - Trench dimensions will dictate the design and materials needed.
 - Can be aluminum, timber (must be Douglas Fir or Oak), hydraulic, or pneumatic.
 - Appendix C describes the spacing of cross braces, uprights, and walers in timber shoring systems. (Size of timber shoring members will depend on the type of soil).
 - Appendix D describes the required spacing between vertical shore rails, horizontal walers and required cylinder sizes in aluminum hydraulic shoring systems.

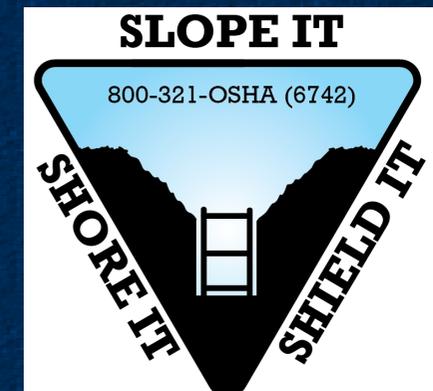
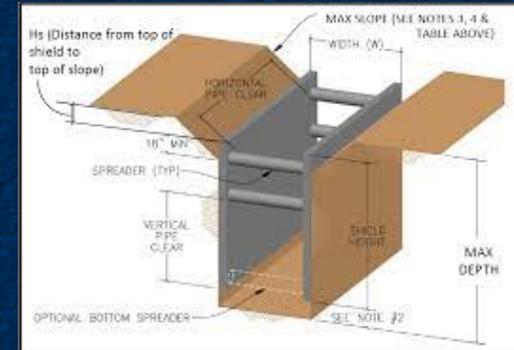


Shielding 29 CFR 1926.652(c)



Shielding-1926.652(c)

- Shielding can be used in all soil types.
 - A shield may not be used at depths or in soil types that are beyond the manufacturer rating.
 - The Manufacturer information and tabulated data must be kept on site
- Installing and Stabilizing Shield systems:
 - Shields must be placed no higher than 2 feet above the bottom of the trench and must extend at least 18" above the toe of the trench slope or vertical side
 - The shield must be stabilized to prevent lateral movement
 - No employee may be in the excavation while the shield is being moved vertically (*i.e.*, installation, or removal).
- The shielding system must be continuously inspected to ensure it is free from damage or defects.



Criminal Liability for Violations of the Trenching Standard



- **What Triggers Criminal Liability?**



Criminal Liability for Violations of the Trenching Standard



- Under the OSH Act, an employer may be criminally prosecuted in cases where an employee has died because of the employer's "willful" violation of OSHA regulations.
- OSHA defines a "willful" violation as one "in which the employer either knowingly failed to comply with a legal requirement (purposeful disregard) or acted with plain indifference to employee safety."



- **Basic Facts**

- **22-year-old employee died when an unsecured trench collapsed.**
- **3rd party inspection identified unsecured trenches at the project site months prior.**
- **Harco Superintendent and Sky Foreman both ignore repeated warnings.**
 - **Made no improvements over the next several months.**
- **3rd party inspector notified the super and foreman of an unsecured 7-foot trench.**
 - **2 hours prior to collapse.**
- **Warning to cease work in the trench was only communicated in English.**
 - **Was not understood by Spanish speaking employees including the victim.**
 - **Warning in Spanish came too late.**

Result: CRIMINALLY NEGLIGENT HOMICIDE (Superintendent and Foreman)



- **Basic Facts**

- **50-year-old employee was killed while installing a residential water service line.**
- **Employee hired to install drywall and do carpentry work.**
- **Employer Failures:**
 - **Trench collapsed a day earlier; Employer failed to change procedure.**
 - **Employer failed to provide employee with trench hazard training.**
 - **Employer failed to use a trench protective system.**
 - **Employer failed to place soil piles at a safe distance from trench edge.**
 - **Employer failed to provide ladders, and**
 - **Employer failed to use appropriate utility location procedures.**

Result: Manslaughter Charges (owner)

Criminal Liability for Violations of the Trenching Standard



- **OSHA Has Increasingly Turned to Criminal Enforcement.**
 - **Violations Could Result in Manslaughter Charges**
- **Not Reserved Just for Truly Egregious Violations Resulting in a Fatality**
- **A Previous Violation Plus a Fatality May Open a Company, and its Employees to Criminal Liability**





- **Basic Facts**

- **Two employees were killed while replacing a fire hydrant supply line.**
 - **Trench collapsed and filled with water.**
- **Owner/Employer was aware of shoring requirements and the trenching dangers.**
 - **Atlantic Drain had two separate OSHA violations in the past 10 years for similar failures.**
- **Because of prior violations, the Owner/Employer had extensive training on how to prevent cave-ins.**
 - **AND STILL FAILED TO PROVIDE NECESSARY PROTECTIVE SYSTEMS.**

Result: FELONY MANSLAUGHTER (owner)



- Heat
- Trenching & Excavation
- **OSHA's Drone Program**
- Infectious Disease



OSHA's Use of Unmanned Aircraft Systems



- OSHA has used drones since 2018
- Statistically unlikely to encounter an OSHA drone inspection
 - Approx. 1 or 2 Operators in each area
 - Typically used for high elevation inspections
 - High tension power lines
 - Cell towers
 - Consent or Warrant still required.





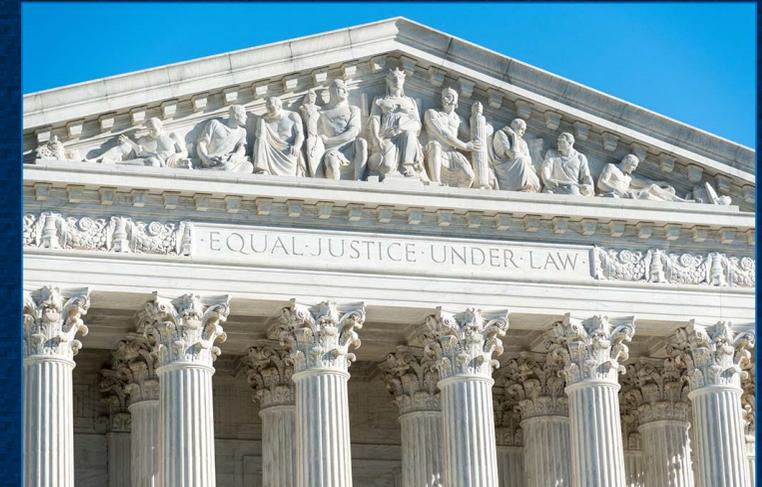
- Heat
- Trenching & Excavation
- OSHA's Drone Program
- **Infectious Disease**



Communicable & Infectious Disease



- *National Federation of Independent Business v. OSHA*, Nos. 21A244, 21A247, 585 U.S. ____ (2022)
 - “A significant encroachment into the lives—and the health—of a vast number of employees.”
 - “It is telling that OSHA, in its half century of existence, has never before adopted a broad public health regulation of this kind—addressing a threat that is untethered, in any causal sense, from the workplace.”
 - “The mandate extends beyond the agency’s legitimate reach.”
- OSHA and the DOL’s attitude toward Ruling:
 - Extremely narrow.
 - Fully intend to pursue similar types of rulemaking policies.
 - Believe an infectious disease standard can be created.



Questions?



Thank You for Attending Today



Rob Remington

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Rob Remington maintains a national legal practice encompassing a broad range of business disputes with a focus on complex commercial, construction and real estate litigation. Sophisticated clients with national litigation management experience describe Rob as a “class A” trial lawyer. He has a proven style when it comes to developing cases for trial, jury selection, and connecting with juries on even the most complex of issues.

Rob represents contractors, owners, lenders, material suppliers, design professionals and sureties in a wide variety of construction-related matters. He has significant experience in all aspects of construction law, including construction claim defense, management and avoidance, geotechnical issues, construction defects, contracts, labor issues, competitive bid compliance and protests, guaranty, payment and performance bond issues, mechanics’ liens and attested accounts, and alternative dispute resolution.

Rob’s practice includes acting as national construction counsel to a Fortune 100 contractor, a major international underground contractor, and the design and construction division of the largest ethanol manufacturer in the United States. Rob has handled litigation in Ohio, Mississippi, New York, California, Illinois, Connecticut, Massachusetts, Michigan, Tennessee, Colorado and Hawaii.

Rob also focuses on commercial litigation in state and federal courts and regulatory agencies throughout the state of Ohio and nationally.

Rob, a partner and career-long member of Hahn Loeser, is founder and chair of the firm’s construction law practice group, co-chair of the litigation practice area and a member of the firm’s board of directors. *ChambersUSA* has recognized Rob as a Top lawyer in Ohio since it began publishing in the U.S. in 2004. According to *Chambers*, Rob is described by his clients as being “a straight shooter who doesn’t make mistakes” and leads “a 100% excellent...group.” Rob has also been consistently recognized as a leading lawyer in his field by *The Best Lawyers in America*[®] and *Ohio Super Lawyers*[®]. The firm has received recognition from Rob’s clients as a Go-To Law Firm[®] for Top 500 Companies by American Lawyer Media (ALM).



ROB REMINGTON

PARTNER

Rob is a frequent speaker and author on a variety of construction-related topics. He has provided extensive training for clients nationally on construction law topics, including construction contract terms and conditions, claims avoidance and management, project documentation, mechanics' liens, bonds, bond claims and project delivery methods.

Rob was one of the inventors of the claims matrix, which was developed 10 years ago to offer construction clients a fast, comprehensive, consistent and cost-effective preliminary evaluation of construction claims. Clients nationally have used the matrix on dozens of construction claims. On July 30, 2013, Hahn Loeser & Parks LLP was issued a U.S. Patent (No. 8,498,945) for the Firm's Claim Evaluation Methods, Systems, Products and Data-Structures, which is a method for evaluating a potential claim using a computerized platform.

Publications & Speaking Engagements

- Co-Author, "Delays in Critical Material for Bridge Contractors: Managing Risk Through Proactive Planning and Strict Adherence to Notice Requirements", May 2022.
- Frequent speaker/moderator, Advanced construction law and government contracts, AAA, ABA, AIA, Lorman Educational Services, NBI, 1995-present.
- Speaker, *Green Construction ADR Update: What is Changing, and What is Staying the Same?* American Arbitration Association LEED/Green Construction Seminar Series, Multiple Locations, 2010-11.
- Speaker, *Claims and Mechanics' Liens*, Hahn Loeser & Parks Seminar, May 2010.
- Speaker, *Arbitration Panels: Choose Wisely!*, ABA Section of Litigation Sound Advice Audio Library, 2010.
- Speaker, *Protecting Yourself in Tough Times: Managing Your Risk and Maximizing Your Profit in Commercial Construction*, National Business Institute Teleconference, October 2009.
- Plenary session speaker, *When "Green" Turns to "Red" and LEEDs to a Summons and Complaint: Potential Liability on Green Projects*, Annual Meeting of the ABA Forum on Construction, April 2009.

Professional History

- Partner, Hahn Loeser & Parks LLP, 1997-present; Board of Directors, June 2007-present; Co-Chair, Litigation Area, 1997-present; Chair, Construction Law Practice Group,

1995-present; Chair, Recruiting Committee, 1995-2000; Associate, 1988-96.

- Intern, United States District Court, Northern District of Ohio, the late Chief Judge Frank J. Battisti, 1987-88.

Admissions

- State of Ohio, 1988; District of Columbia, 1989.
- U.S. District Court for the Northern District of Ohio, District of Michigan and District of Indiana; U.S. Court of Appeals for the District of Columbia Circuit; U.S. Supreme Court.

Education

- Cleveland Marshall College of Law, J.D., *with honors*, 1988.
 - Honors & Activities: Cleveland State Law Review, Managing Editor, 1988; Spangenberg, Shibley, Traci & Lancione Scholarship Recipient; American Jurisprudence Award; Cleveland State Law Review Outstanding Achievement Award, 1988.
- Rochester Institute of Technology, College of Applied Science and Technology, B.S., 1983.
 - Honors & Activities: Outstanding Senior Award; Collegiate Cross-Country and Track, 1979-83; Senior Athlete Award, 1983.

Memberships & Affiliations

- American Arbitration Association, AAA Large and Complex Construction Cases, Panel Member; Construction Advisory Council, Past Chair; Keynote Speaker, ACE Arbitrator Training for Ohio.
- American Bar Association, Appointed, ABA Section of Litigation Leadership 2003-present; Construction Litigation Committee, Former Co-Chair; Real Estate Litigation Committee, Former Co-Chair; Sound Advice Committee, Member, 2013-present; Membership and Marketing Committee, Member, 2010-12.
- American Bar Foundation, Fellow.
- Cleveland Metropolitan Bar Association.
- District of Columbia Bar Association.
- Dispute Resolution Board Foundation, Neutral.
- International Institute for Conflict Prevention and Resolution, Neutral.
- Association of General Contractors, Associate Member; Consensus DOCS Green Addendum Taskforce.
- National Building Association.
- Ohio State Building Association.
- Cleveland-Marshall College of Law Alumni Association, Board of Trustees 2007-2012; Development Committee, Co-Chair, 2009-12; Visiting Committee, 2013-present.



ROB REMINGTON

PARTNER

Awards & Distinctions

- *ChambersUSA*, Construction Law, 2003-22; Litigation: General Commercial, 2013-19.
- *The Best Lawyers in America*®, Construction Law, 2008-22; Litigation-Construction, 2011-22, Commercial Litigation, 2021-22.
- *Ohio Super Lawyers*®, 2004-22.
- AV Preeminent®, Martindale-Hubbell.
- Johnson Controls, Inc., Merit Award 2003.
- Nominated by Senior Group Counsel for the Johnson Controls, Inc. President's Award 2003.
- Section of Litigation Award of Excellence, Construction Litigation Committee, American Bar Association, 2003; Outstanding Subcommittee Chair Award, 2000 & 2002.

Community Involvement

- City of Brecksville Charter Review Commission, 2013.
- Diamond League Baseball Organization, Inc., Legal Advisor.



MICHAEL B. PASCOE

PARTNER



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Michael B. Pascoe is a trial lawyer with experience in a wide range of commercial litigation representing both individuals and corporations in state and federal court. Mike routinely manages breach of contract claims, construction disputes, facilities management litigation, and business claims. He also advises clients on contract negotiation, commercial lease negotiations and construction contracts.

Mike's background as a computer programmer and IT systems administrator has helped him to litigate complex matters and represent designers of electrical test equipment in all aspects of their business.

Mike frequently represents clients before the Occupational Safety and Health Review Commission. He also has extensive experience defending clients in claims for violation of the Telephone Consumer Protection Act.

Mike recently obtained a \$1.4 million settlement of Court of Claims case against the Ohio Department of Transportation related to a mine grouting project under State Route 2.

Publications & Speaking Engagements

- Speaker, "OSHA Insights & Updates," Lockkeepers Restaurant, June 2022.
- Speaker, "Joint Venture – Practical Pitfalls," Ohio Department of Transportation Bonding Education Program, February 2022.
- Speaker, "OSHA Liability for Contractors," Ohio Department of Transportation Bonding Education Program, February 2022.
- Co-Author, "What to Do When Your Employees Are Dive Bombed By Falcons," *Properties Magazine*, June 2019.
- Speaker, "Navigating ODOT's Dispute Resolution Provision," Conaway Conference, February 2019.
- Speaker, "Cutting-Edge Negotiation Tactics to Overcome Obstacles in Construction Contracts," Construction Law: Advanced Issues and Answers, National Business Institute Seminar, December 2018.

Professional History

- Partner, Hahn Loeser & Parks, 2015-present; Associate, 2006-15; Summer Associate, 2005.
- Law Clerk, Milton Kramer Legal Clinic, 2004-05.
- Founder and Owner, Pascoe Consulting, 2001-04.
- Programmer/Analyst, Datatel, Inc., 2000-03.

Admissions

- State of Ohio, 2006.
- U.S. District Courts for the Northern and Southern Districts of Ohio.



MICHAEL B. PASCOE
PARTNER

Education

- Case Western Reserve University School of Law, *magna cum laude*, J.D., 2006.
 - Honors & Activities: International Academy of Trial Lawyer Award; Jonathan M. Ault Award; Order of the Coif; Order of the Barristers; Jonathan M. Ault Mock Trial Team; Paul J. Hergenroeder Award.
- Wittenberg University, B.A., 2000.
 - Honors & Activities: Alpha Phi Omega Service Fraternity, Vice President and Founding Member; Lambda Chi Alpha, Social Fraternity, Officer and Founding Member.



COLTEN J. SIEDLARCZYK

ASSOCIATE



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Colten J. Siedlarczyk focuses his practice on construction law and commercial litigation. Colten strives to proactively mitigate risk and position construction clients to avoid disputes.

Prior to earning his J.D. from DePaul University College of Law in 2021, Colten gained logistics, transportation, and supply chain experience through employment at leading third-party logistics providers.

Publications & Speaking Engagements

- Speaker, “OSHA Insights & Updates,” Lockkeepers Restaurant, June 2022.

Professional History

- Associate, Hahn Loeser & Parks LLP, 2021 – present.
- Summer Associate, Hahn Loeser & Parks LLP, summer 2020.
- Clinic Intern, DePaul University College of Law, Business Legal Intern, 2019-2020.
- Judicial Extern, Cook County Circuit Court, Law Division, summer 2019.
- Senior Carrier Sales, Arrive Logistics, 2017-2018.
- Sales Executive, Mainfreight USA, Inc., 2016-2017.
- National Account Manager, Coyote Logistics, 2013-2016

Admissions

- State of Ohio, 2021

Education

- DePaul University College of Law, J.D., 2021.
 - Honors & Activities: Business Law Certificate, SBA New Student Mentor, Phi Alpha Delta International Law Fraternity.
- Kent State University, Business Administration, B.A., 2013.
 - Honors & Activities: Recipient of Kent State University President’s Scholarship, Kent State Golden Flashes hockey team, ACHA DI.



About Hahn Loeser

HL People. Passion. Performance.

These three words are the essential and consistent elements in the DNA of Hahn Loeser attorneys and staff members since our earliest beginnings more than a century ago.

HL People.

We have built a team of highly skilled attorneys and staff members across the United States who offer our clients creative business solutions and a collaborative approach that distinguishes us from other law firms. When it comes to our employees, we don't compromise. Our edge has come from focusing on the people we serve and the people who serve them. The varied backgrounds of our attorneys represent the firm's long-standing tradition of diversity. This diversity has fueled the development of a wide-ranging practice and enables our firm to maintain the strong relationships we've cultivated over many years with different segments of our communities. At Hahn Loeser, we want to understand your business and personal goals so we can help you achieve the objectives based on your individual business needs.

Our client-centered approach is based on our team of highly skilled attorneys and staff members across the country who work collaboratively across practice disciplines and office locations to uncover creative solutions to our clients' issues and concerns.

With more than 130 attorneys, we have a national presence and have grown to six offices in strategic locations around the country, including:

- Cleveland and Columbus, Ohio.
- Naples and Fort Myers, Florida.
- San Diego, California.
- Chicago, Illinois.

HL Passion.

We have developed a culture of excellence spanning a wide breadth of practices and industries. But our biggest passion remains helping our clients achieve their goals. Always keeping our clients' priorities at the forefront, we address issues through their eyes, coupled with the innovative and focused mindset of our attorneys.

Our clients are successful institutions, businesses, and individuals who expect and appreciate attention and results. All too frequently, lawyers tell clients what cannot be done. At Hahn Loeser, we hold the opposite view. We help clients achieve their business and personal objectives quickly and efficiently.



Our team invests the time to learn the complexities of our clients’ operations, their goals and aspirations, and their future needs. From our experience with clients, we are convinced that this is the kind of value that clients should expect from their professional service providers. Further, we believe it’s why we have established so many long-standing client relationships – some proudly dating back decades.

Our attorneys serve clients spanning multiple industries, including:

- | | | |
|-------------------------|--|------------------------|
| Automotive & Aerospace | Biotech & Medical Device | Chemicals & Materials |
| Colleges & Universities | Energy & Environmental | Financial Institutions |
| Food & Beverage | Gaming | Government |
| Healthcare | Hospitality | Manufacturing |
| National Retailers | Natural Resources & Emergency Services | Nursing Homes |
| Pharma | Plants & Agricultural | Trucking |

We embrace the values of diversity, equity, and inclusion by recruiting, retaining, and empowering our professionals. The diversity of our professionals—in race, religion, national origin, ethnicity, sexual orientation, gender, age, veteran status, gender identity and expression, and work experience are vital benefits to our firm culture and operations. We strive to foster an inclusive culture that encourages our talented and diverse attorneys to bring their whole selves to work, allowing them the ability to advance and thrive. When multifaceted teams approach legal issues with a breadth of backgrounds, perspectives, and experiences, we can better provide authentic, innovative, and comprehensive solutions to our clients.

HL Performance.

We are zealous about the work we do for our clients. We aim to:

- Strike a balance between an entrepreneurial and a team-based approach.
- Deliver a strategic perspective that offers true value.
- Provide extremely responsive service and an excellent work product.
- Impart proven intelligence alongside humility.

We’ve learned to deliver value in everything that we do, but we know that value should never come at the expense of real strategy. The key is balance. Hahn Loeser helps clients find creative solutions to their business and legal challenges without giving up on zealous advocacy to defend their rights. It’s what we like to think of as balance without compromise.

Recognitions and Honors

THE NATIONAL LAW JOURNAL Founded in 1920, Hahn Loeser is ranked by *The National Journal* as one of the 500 largest law firms in the United States.

Our firm is large enough to handle complex litigation and corporate transactions, yet nimble enough to offer our wide-ranging client base highly personalized service.



Hahn Loeser has been recognized four times as a “Go-To Law Firm” for the Top 500 Companies in the United States by American Lawyer Media (ALM) in commercial litigation and intellectual property. The recognition is based on surveys of in-house counsel at some of the largest companies in the country.



For 18 consecutive years, *Chambers USA: America’s Leading Lawyers for Business* has ranked our firm and/or one of our attorneys in the following practice areas:

- Commercial Litigation
- Commercial Services / Restructuring
- Construction
- Corporate / M&A
- Intellectual Property
- Labor & Employment



BTI Consulting Group designated our firm as having a “Client Service A-Team.” We are rated among the best firms for unprompted communications and for having the absolute best client service, as rated by corporate counsel.



Super Lawyers rated 38 Hahn Loeser attorneys nationwide, including 17 named to the nationwide “Rising Stars” list.



Forty-four attorneys are rated AV[®] Preeminent[™] by Martindale-Hubbell, the highest peer rating standard awarded to attorneys. The attorneys ranked at the highest level of professional excellence for their legal expertise, communication skills, and ethical standards by their peers.



Hahn Loeser has a proven track record as outside counsel for NYSE and Fortune 1000 clients such as Fidelity National Financial, Cleveland-Cliffs Inc., Aetna, Travelers, and Lincoln Electric.



Our firm is home to one of the largest and most award-winning Estate Planning Practice Groups in Northeast Ohio. Three partners are elected to “Fellows” of The American College of Trust and Estate Counsel (ACTEC). Fellows are the best and brightest in the trust and estate practice, with years of experience representing and advising families.



Construction

More than 40 accomplished attorneys comprise Hahn Loeser's Construction team. We provide counsel on nearly every area of law impacting the construction industry today, including:

- Alternative Dispute Resolution
- Bid Disputes
- Bond Claims
- Claims Management
- Contract Negotiations
- Intellectual Property
- Litigation
- Mechanic's Liens
- OSHA Requirements

We represent general contractors, subcontractors, construction managers, owners, developers, lenders, material suppliers, design professionals, and sureties in a wide variety of construction-related matters. Attorneys have also significant experience representing both owners and contractors in multi-week trials and arbitrations.

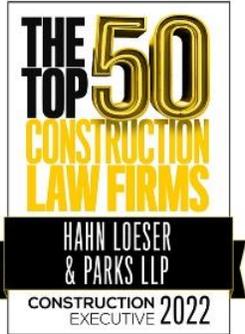
Our construction attorneys represent a wide range of industry clients ranging from Fortune 100 and substantial privately held companies, to small family-owned construction enterprises. Our Construction team has a national footprint to handle matters across the United States, while at the same time represent construction companies that provide services solely to local markets. Regardless of the client, forum, or the size of litigation, our attorneys work hard, are responsive, and have an unyielding commitment to achieve outstanding results for our clients. From providing quick guidance on lien rights and bonding issues, to litigating disputes on multi-million-dollar projects, we consistently and passionately deliver first-rate legal representation.

Contracts and Business Transactions

Our attorneys regularly counsel clients in the development and negotiation of prime contracts and subcontracts for all stages of public and private construction projects. By ensuring that project documents and contract terms protect our clients' interests *before* work begins, our clients are able to focus on the smooth progression of their projects while we help to prevent disputes and unexpected risks along the way.

Recent projects include:

- Negotiating a \$3.25 billion contract for the construction of 1,000-megawatt coal-fired power plant.
- Assisting a Fortune 100 client with the overhaul and redrafting contract documents for use in security system installation and service projects.
- Assisting a client with the development of comprehensive contract documents for use in design-build projects.





Claims

Our Construction attorneys routinely guide clients with a need to assert claims for additional costs and expenses incurred on their projects, as well as for clients addressing claims asserted by lower-tier subcontractors.

Recent projects include:

- Creating a proprietary program to evaluate construction claims. The program aids in making an upfront assessment of the viability of a claim and helps determine whether a claim should be pursued in litigation. The program includes an analysis of the applicable contractual requirements as well as the damages — including delay and acceleration damages, overhead, lost labor productivity, and lost profits — that can and should be pursued.
- Service as National Construction Claims Counsel for a Fortune 100 company.

Alternative Dispute Resolution and Litigation

Our attorneys have the capacity to handle the most challenging and multi-faceted of construction disputes involving several parties with divergent interests.

Recent projects include:

- Defending claims on behalf of a construction firm that, under a public contract in the approximate amount of \$200 million, was a principal contractor in the reconstruction of the largest bascule bridge in the world.
- Representing a prominent regional general contractor in multiple high-profile disputes involving a seven-story research laboratory, as well as in the renovation of a large public university's stadium.
- Representing, jointly, Exxon Mobil Corporation and affiliates in multiple disputes with joint venture partner Saudi Basic Industries Corporation. These cases, governed by Saudi law, included a 2003 trial resulting in a \$416.8 million verdict for Exxon Mobil. The Delaware Supreme Court has upheld the verdict on appeal.
- Serving as litigation counsel on numerous matters for one of the leading building supply outlets in the State of Florida.
- Representing a general contractor in the enforcement of a lien more than \$3 million, where the lending institution instituted foreclosure action in New York.
- Represent a general contractor in a dispute with a Boston-based real estate developer, and its related entity that owns the building, relating to a \$22 million HUD-financed apartment renovation project in Cleveland, Ohio.



- Represented a subcontractor in connection with a dispute relating to a billion-dollar Pennsylvania bridge construction project.
- Represent a prominent Ohio-based contractor, in a significant dispute with the Ohio Department of Transportation (ODOT) with respect to the construction of a bridge over the Maumee River in Defiance, Ohio.

Troubled Projects

We collaborate regularly with our firm's Creditors' Rights practice area to help our clients deal with situations of financial distress, whether that distress exists within their own organization or with their business partners. This unique, cross-disciplinary approach to counsel enables us to find creative, effective solutions for any party involved in a construction transaction, including owners, design-builders, general contractors, subcontractors, materialmen, and suppliers, among others.

When financial distress exists with one of our clients' business partners, we take action.

- We address all strategies available for creditors in the construction arena.
- In addition to the reactive steps of assisting with the filing and prosecution of mechanics' liens, we often work with clients on a proactive basis to develop strategies of collection and payment. These strategies are designed to protect an enterprise against the pitfalls that occur when a business partner enters an insolvency situation.
- One recent representation includes counseling a Fortune 100 client on how to transact with a financially troubled business partner; our guidance resulted in additional leverage for our client to realize upon more than 80% of its general unsecured pre-petition claims once the client's business partner entered into a Chapter 11 reorganization.

When financial distress exists with a client, we take action:

- We draw from the wisdom and experience within the ranks of our entire firm to thoroughly assess all available options for our client, both financially and operationally, and provide that client's management team with legal counsel and the tools necessary to achieve their desired results.
- We have represented debtor parties in the construction arena in reorganizations through Chapter 11, and through state law means, while providing an approach to allow our clients to retain their long-standing relationships and obtain or simply maintain financing for the go-forward operations.

Green Construction Projects

We assist clients in a wide variety of projects with a "green" component. For over a decade, our firm has provided counsel and support to clients engaged in energy savings performance



contracting, including creating educational presentations concerning the legal framework and risks involved in public performance contracting projects. We also aid clients of all sizes who are entering into the relatively new arena of “green” construction and alternative energy production and host seminars on how to avoid the pitfalls of doing business in these emerging industries.

Recent projects include:

- Counseling a Fortune 100 client in the successful negotiation of an engineering and fabrication contract for a first-of-its-kind carbon sequestering system.
- Representing a client involved in a land encroachment dispute in connection with the erection of wind turbines.
- Assisting clients in the development and negotiation of energy savings performance contracts with public and private entities.

Representing Public Entities

Time-consuming and costly complications can arise for public entity projects, which include construction project delay claims, defective workmanship, force majeure claims, lien issues, insurance issues, jurisdiction, and payment issues.

Recent projects include:

- Representing a state university in relation to construction issues, including claims by contractors for additional funds due to cost overruns and delays, and claims against contractors and a design professional for delays and defective work.
- Pursuing a claim on behalf of a public entity against the design team responsible for a recently constructed prison. The case was settled with a \$3.5 million payment to the state.
- Achieving a settlement of more than \$4 million for a university in a matter involving the assertion of claims against the bonding companies and the bankrupt estate of a contractor, as well as a defense of preference claims and a claim that lack of payment put the contractor into bankruptcy.

Real Estate, Land Use and Zoning

Our attorneys assist clients in taking development plans through the complexities of the regulatory process.

Recent projects include:

- Representing a cellular telephone towers manager in various cases involving contract disputes, zoning issues, and conspiracy claims.
- Significant experience in “big box” litigation.