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WORKING WITH YOUR WORKER SAFETY EXPERT – FOR DEFENSE ATTORNEYS

1. Bring the expert in as soon as possible

The best way to begin is to talk with us as soon as possible about the known facts and the safety roles and responsibilities of different parties so we are on the same page about potential theories of liability and facts that we will need to perform our evaluation.

The worst thing to do is to complete discovery and then send it to us for a defense report. The process works much better when we are brought in early and we are on the same page about where we intend to go and how we can get there.

2. Provide us with all relevant discovery documents, such as:

- Defendants' written health and safety programs
- Superintendent's daily logs
- Pre-job safety conference minutes
- All safety inspection reports
- All weekly safety meeting minutes/reports
- Written job description of superintendent of GC/CM or facility management
- All contracts between parties
- All incident investigation reports performed by defendants and others
- Safety inspection reports performed by insurance company
- OSHA citations along with the entire OSHA file
- Police reports
- Emails, texts and all relevant correspondence related to the incident
- Photographs and security video

3. Understand the standard of care for each defendant

There is a different standard of care for construction project owners, general contractors/construction managers, premises owners/host employers, contractors, subcontractors and employers regarding steps each should take to prevent worker injury.

Those roles are summarized on a separate document found here.

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4. Knowledge of the exposure to the hazard by the plaintiff is usually the most important fact for our evaluation

The most important fact in many cases is whether or not the defendant knew or should have known of the hazard that led to injury. It is unfair to blame anyone for something they didn't know or couldn't reasonably be expected to know about. Likewise, OSHA has to prove knowledge (actual or constructive) on the part of the employer in order to sustain an allegation of a violation.

A key question is whether or not the exposure to the hazard was an "isolated incident" within an environment where safety was being enforced. Likewise, the duration of the exposure to the hazard is important relative to imputing constructive knowledge. Constructive knowledge can be imputed if the exposure to the hazard existed for more than one shift. That is because OSHA requires frequent and regular (at least daily) safety inspections.

5. Ask us to propose questions for deposition of key witnesses

Having us prepare questions for the plaintiff and other witnesses ensures we get the answers needed to support one of the defenses in a worker injury case: the defendant complied with the standard of care; the defendant did not know and could not have reasonably known of the hazard that led to the incident; or, the failure of the defendant to comply with the standard of care was not a proximate cause of the incident. If there is another defendant in the case, we can craft questions that show that the other defendant was responsible for the incident.

6. Recognize useless answers

Sometimes deponents give useless answers and the attorney does not realize it or fails to follow up. For example:

- The deponent answers: "I believe so." Sometimes the deponent really means "I think so but I don't really know."
- When a deponent answers: "I would say that …," you should ask: I'm not interested in what you "would say." Are you now saying that you can swear that …?"
- When the answer is: "It is my understanding that …," you should ask what is the basis of their understanding.

You would be surprised how frequently attorneys don't follow up after getting confusing, ambiguous, unclear or contradictory answers.

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7. Depose the opposing expert

Sometimes attorneys think they may save time and money by trying to get a settlement without deposing the opposing expert. My opinion is that a case is much more likely to settle after you have shown the strengths of your case and the opposing side's weaknesses. We are pretty good at providing you with questions for the opposing expert that will show those weaknesses. Therefore, we suggest that if you are in a state that permits expert depositions, you strongly consider it.

Our experience is that we rarely go to trial when depositions are taken of both plaintiff and defense experts. A deposition is a lot easier and cheaper than a trial.

We have deposition transcripts and reports from many of the opposing experts we commonly come across. We use those when preparing rebuttal reports, in crafting suggested deposition questions for opposing experts for deposition and trial.

8. Review our reports carefully

We carefully review our work and try to prepare perfect bullet-proof expert reports. However, everyone makes mistakes, including us. Please read our reports carefully. We will consider all of your comments and suggestions and will make changes where appropriate. The closer we work together, the better.