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CONSTRUCTION WORKER INJURY – WHAT KIND OF EXPERT NEEDED?

Should you look for a construction engineer or a construction safety expert?

Safety Professionals and Engineers are not interchangeable. There are distinct differences in their skills, training and methodology.

Construction engineers perform evaluations of causation **mechanistically**. They can tell you **how** the hazard that led to injury was created and **how** the incident occurred.

Construction safety professionals evaluate causation **systematically** to explain “**why**” the incident occurred. That is, we look at the **construction management system** to determine “**why**” the hazard that led to injury was permitted by the general contractor to be created in the first place. We answer the question “**why**” didn’t the general contractor/construction manager plan, monitor and ensure that the hazard was eliminated or controlled? Why didn’t the general contractor require OSHA compliance?

In the great majority of construction injury cases, there is no civil, structural or any other engineering question. Most construction cases involve management failures of the general contractor or contractor such as failures to require:

- Work to be done in compliance with OSHA standards.
- Workers to work at height with fall protection.
- Scaffolds to be built by qualified, trained workers.
- Appropriate personal protective equipment.
- Work to be done from scaffolds rather than ladders.

Construction engineers are **not** safety experts. They are **not** OSHA experts. In cases where they formed opinions not based on engineering principles, they are vulnerable to cross examination.



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Cross Examination of Engineering Expert

Engineers who form opinions of causation without performing an engineering evaluation are vulnerable to cross examination:

- Am I correct that you are a civil engineer, mechanical engineer ...?
- Can you show me any report where you performed an engineering evaluation?
- Am I correct that there is no engineering question involved in this case?

Construction Safety Management Expertise

- Can you tell me the names of any industry safety organizations that you consider to give reasonable guidance regarding ways to manage safety to prevent construction worker injury?
- Do you know the name of any prominent authors in the field of safety management?
- Do you know the names of any prominent safety journals in the field of safety management?
- Have you ever written a construction safety manual?
- Have you ever been hired to design a safety program?
- Have you ever written anything that was ever published regarding safety?
- Have you ever held a job where your primary function was safety management?
- Are you a member of the American Society of Safety Professionals?
- Have you ever taught in any colleges or universities on any safety subject?
- Have you ever taught safety anywhere at all?
- Have you ever attended any construction safety conference?
- Tell me all of the safety journals that you subscribe to.
- Did you ever work full time in safety management?
- Have you ever been trained in the principles of safety management?
- Do you know of any principles of safety management?



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OSHA Expertise

- Have you ever taught anywhere on the subject of OSHA policies and procedures?
- Can you tell me the four elements that OSHA has to prove in order to sustain an allegation of a serious violation?
- Can you tell me the three elements that OSHA considers when deciding if an employer had constructive knowledge that an employee was exposed to a hazard in violation of an OSHA standard?
- Can you tell me some of the affirmative defenses that OSHA considers to allegations of violations of OSHA standards?
- How does OSHA determine whether or not a citation should be issued for a “rules violation” on the part of an employee?
- Do you know how OSHA determines whether to cite an employer for a violation of the General Duty Clause?
- Do you know if the Occupational Safety and Health Act grants OSHA the authority to cite a worker for a violation of an OSHA standard? (The Act doesn’t give OSHA the authority to cite a worker. If he/she says it can – ask if he/she is **100 percent sure**. Defense experts often incorrectly think that OSHA can cite a worker.)
- Do you know the method that OSHA uses to determine whether or not a violation is a willful violation?
- Do you know the reasons why OSHA would grant a variance from a standard?
- Do you know who in OSHA has the authority to grant a variance?
- Have you ever participated in an informal conference with OSHA after OSHA issued an employer a citation?
- Were you ever qualified as expert in OSHA’s policies and procedures for enforcing standards?
- Do you hold yourself out as expert in the policies and procedures that OSHA uses to decide if there was a violation of an OSHA standard?

The above is a partial list of questions you could ask an opposing engineering expert in deposition or in trial. We also could prepare proposed questions for deponents of key management representatives.



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Call anytime you have a question about a potential case where you represent the plaintiff or the defendants. We will be happy to discuss it with you.

Also, please check out our updated website at www.safetyresearchinc.com.