

**FROM MY PERSPECTIVE—NEWSLETTER—JUNE 2009**

Subject: Beware of OSHA's 10 Hour Training Materials!

OSHA's Construction training materials teach sound safety practices.

OSHA's interpretation of the "multi-employer work site rule" allows OSHA to cite the "Controlling Employer" (Builder) regardless of which Independent Contractor caused or was exposed to the safety violation. (Contact your attorney for his opinion.)

This interpretation has met a mixed bag of decisions from cases appearing in the 94 Judicial District Courts in the United States.

OSHA's 10 hour optional training course encourages employers to conduct a "Tool Box Safety Talk" with their employees and Independent Contractors.

A precedent-setting Texas Supreme Court ruling upheld an \$18 million verdict against a general contractor, after the general contractor's job superintendent gave such a "Tool Box Talk", answering safety questions. A glazer asked the job superintendant to inspect the specific rigging he was using on his boson's chair. The general contractor's superintendant knew of, but did not object to the glazer's use of the boson's chair without an independent lifeline. As a direct result of the glazer not using an independent lifeline, the glazer fell to his death.

The Texas Supreme Court unanimously upheld a lower court verdict that found the general contractor grossly negligent in the death of the glazer (in 1990). (Lee Harrison Construction, Inc vs. Norma Harrison 12-20-01) "The Texas Supreme Court has historically been hesitant in imposing liability on a general contractor ("GC") for injuries sustained by employees of its subcontractors. As a general rule, the GC does not owe a duty to ensure that an independent subcontractor performs its work in a safe manner. A duty does arise, however, if the general contractor retains some control over the manner in which the independent contractors performs its work. The GC's duty of care is commensurate with the control it retains over the sub's work" (John D. Sloan, Jr. Attorney, Gardeme Wynne Sewell LLP – Dallas, Texas – 1-7-02 in a memo to Mark Hilliard)

The legal definition of negligence – the failure to use reasonable care: the doing of something which a reasonable prudent person would not do, or the failure to do something which a reasonable prudent person would do under the circumstance. A departure from what an ordinary reasonable member of the community would do in the same community. (Lectric Law Library's Lexicon on Negligence)

However, if a home builder receives a citation from OSHA alleging bodily injury to a third party and the home builder pays the fine, this will be used by a personal injury attorney as an admission of guilt in its lawsuit.

How do you comply with the "Tool Box Safety Talk" rule without leading the talk and possibly bringing a lawsuit down on you? Be careful!

In 20 years of teaching OSHA Compliance to my home builder clients, the two reasons outlined above are why I never used OSHA approved training materials.