

# Workers' Compensation and Managing Injury Claims

**Moderator**



**Jason D. Kolecke, Esq.**  
Hennessey & Roach, P.C.  
Chicago, IL



**Jacob Alaniz**  
Senior Health and Safety Manager  
Employbridge  
Ventura, CA



**Dominic Donato, Esq.**  
Kahana Feld  
New York, NY



**Clayton Fielder, Esq.**  
Hennessey & Roach, P.C.  
Overland Park, KS



**Adam S. Lopez**  
Loss Control & Safety, CA  
IOA Insurance Services  
Encino, CA



**Maren Mooney, CCP, CLMP, CRIS**  
Director, Claims  
Turner Surety and  
Insurance Brokerage, Inc.  
Des Moines, IA

# Workers' Compensation, Safety, and Managing Claims



January 2024

## Jurisdiction

### General Liability

- Location of where accident took place
  - Ability to move jurisdiction within the State
  - Diversity of Parties

### Worker's Compensation

- Location of where accident took place
- Location of where injured worker was hired
- Principal business location of the employer

# Exclusive Remedies



Will Differ from State to State depending on jurisdiction

- **Complete Bar**

Ability to move for summary judgement or dismissal

- **Waiver or Partial waiver**

Limit Workers Compensation Exposure

Limit Employer Liability



## Elements Needed to Prove Contribution

- **Contribution is a principal of liability sharing**
- **In a negligence claim, the elements needed to prove another defendant's liability are**
  - **Duty**
  - **Breach**
  - **Causation**
  - **Damages**
- **However, in construction claims, the duty owed to other defendants is created by contract**

# TOP 10 OSHA VIOLATIONS – CONSTRUCTION



## **10. Subpart Title: Toxic and Hazardous Substances**

Title: Hazard Communication

Number of Citations: 382

## **9. Subpart Title: Excavations**

Title: Specific Excavation Requirements

Number of Citations: 395

## **8. Subpart Title: Scaffolds**

Title: Aerial Lifts

Number of Citations: 481

## **7. Subpart Title: General Safety and Health Provisions**

Title: General Safety and Health Provisions

Number of Citations: 586

## **6. Subpart Title: PPE and Life Saving Equipment**

Title: Head Protection

Number of Citations: 628

# TOP 10 OSHA VIOLATIONS - CONSTRUCTION



## **5. Subpart Title: PPE and Life Saving Equipment**

Title: Eye and Face Protection

Number of Citations: 1,208

## **4. Subpart Title: Fall Protection**

Title: Training Requirements

Number of Citations: 1,354

## **3. Subpart Title: Scaffolds**

Title: General Requirements.

Number of Citations: 1,527

## **2. Subpart Title: Ladders**

Title: Ladders.

Number of Citations: 1,797

## **1. Subpart Title: Fall Protection**

Title: Duty to Have Fall Protection

Number of Citations: 4,456



# OSHA VIOLATIONS - CONSTRUCTION



FY 2022

# of inspections – 7,015

# of citations – 17,233

Total fines - \$72,119,017





# TOP 4 CAUSES OF INJURY - CONSTRUCTION



- Falls
- Electrocutions
- Being struck by objects
- Being caught in or between objects.



# POST INCIDENT RESPONSE



# RAPID RESPONSE – LIABILITY



- Benefits of OSHA Certification
  - Access to construction sites
  - Knowledge of safety standards, common OSHA violations, instrumentalities involved
- Purpose
  - Preservation of physical evidence
  - Gathering documents critical to liability and risk transfer
  - Taking statements before witnesses "disappear"
- Value Added to Defense/Claims Management
  - Experts and investigators are involved EARLY
  - Work product and attorney-client privileges triggered
  - Realistic liability picture on Day 1
  - Evidence procured to pursue risk transfer as soon as possible
  - Potential to head off litigation through pre-suit resolution
  - Prevention of spoliation charges in litigation



# FINDINGS FROM INJURY INVESTIGATIONS - CONSTRUCTION

Jacob



- Lack of or no safety training
- Inexperienced/incompetent
- Not fit for job duty
- Poor or no supervision
- No use of PPE
- Improper use of PPE
- Hostile work environment

