OSHA & THE CONSTRUCTION TRADES: WHAT GEORGIA PUBLIC ADJUSTERS NEED TO KNOW

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OSHA & The Construction Trades:
What Georgia Public Adjusters Need to Know.

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WHAT’S THE ISSUE AND WHAT’S THE LAW?

Issue:
You need to account for safety when estimating a loss, either residential or commercial. You implement OSHA safety standards in estimating construction costs.

Problem:
Carrier doesn’t want to pay for the additional costs involved. Possible excuses:
- “ordinance and law excludes coverage for it”
- “don’t owe for building code compliance”
- “building codes are not enforced”

How do you frame the argument to best be in a position to get covered?
WHAT’S THE ISSUE AND WHAT’S THE LAW?

Step 1:
Know what your policy says. Always.

Liberty Mutual, LibertyGuard Deluxe Homeowner’s Policy:
“We do not insure for loss by any of the following ... ordinance or law, meaning enforcement of any ordinance or law regulating the construction, repair, or demolition of a building or other structure”

State Farm Homeowners Policy:
“we do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following events .... Ordinance or law, meaning enforcement of any ordinance or law regulating the construction, repair, or demolition of a building or other structure.”
WHAT’S THE ISSUE AND WHAT’S THE LAW?

Step 1:
Know what your policy says. Always.

What are possible arguments looking at the language alone?

- OSHA is “industry custom and practice”; “best practice”
- OSHA does not “regulate” construction itself; concerns safety
- Putting the insured at risk of additional legal action if worker hurt on the property
- OSHA “regulations” are neither “law” nor an “ordinance”
  - Check to see if either term is defined in the policy
- No “enforcement” unless OSHA is on site
  - But: adjusters also use this to say it’s not necessary to pay
HELPFUL TIPS:

☑ Always remember to frame your argument.
☑ Don’t adopt their terms and language.
☑ Read your policy; then read it again.
☑ Don’t hesitate to call your friendly local lawyer if you have questions.
WHAT’S THE ISSUE AND WHAT’S THE LAW?

Step 1: Know what your policy says. Always.

What can you expect to hear from the carrier?
- “We don’t pay for this usually”
- “This is not how it’s done”
- “This is ‘law and ordinance’”
- “We don’t cover local building code enforcement”
- “The local building codes are not enforced, we don’t pay”
- “OSHA only applies to employer, and we don’t owe”
- Questions as to whether there would be any liability to homeowner
WHAT'S THE ISSUE AND WHAT'S THE LAW?

Step 2:
Know what the law is in Georgia.

- Georgia does not have a state specific law concerning construction safety measures
- OSHA therefore covers Georgia and construction
- OSHA applies to all employers, i.e. contractors

continued...

Georgia does not have a state specific law concerning construction safety measures
OSHA therefore covers Georgia and construction
OSHA applies to all employers, i.e. contractors

- https://webapps.dol.gov/elaws/elg/osha.htm#who
- ComTran Grp., Inc. v. U.S. Dep't of Labor, 722 F.3d 1304, 1306–07 (11th Cir. 2013)
WHAT'S THE ISSUE AND WHAT'S THE LAW?

Step 2:
Know what the law is in Georgia.

Georgia law is silent (so far) on interpretation of “ordinance and law,” and whether OSHA is included

  Promising, but doesn’t get us there.


continued...
WHAT’S THE ISSUE AND WHAT’S THE LAW?

Step 2: Know what the law is in Georgia.

☑ Georgia law is silent as to what qualifies as “ordinance and law”


THE COURT PUNTED: We agree ... that there are issues of fact as to whether the Crofts are impacted by any Glynn County ordinances with regard to repairing their house. And we conclude that it would be premature for this Court to determine in the abstract whether the Ordinance or Law exclusion in the Crofts’ policy is enforceable as a matter of law.

continued...

Georgia law is silent as to whether OSHA safety measures qualify as “ordinance and law”


O.C.G.A. § 51-2-5: An employer is liable for the negligence of a contractor:

1. When the work is wrongful in itself or, if done in the ordinary manner, would result in a nuisance;
2. If, according to the employer’s previous knowledge and experience, the work to be done is in its nature dangerous to others however carefully performed;
3. If the wrongful act is the violation of a duty imposed by express contract upon the employer;
4. If the wrongful act is the violation of a duty imposed by statute;
5. If the employer retains the right to direct or control the time and manner of executing the work or interferes and assumes control so as to create the relation of master and servant or so that an injury results which is traceable to his interference; or
6. If the employer ratifies the unauthorized wrong of the independent contractor.


O.C.G.A. § 51-2-5


OSHA:
Occupational Safety and Health Act of 1970.
Occupational Safety and Health Administration

2. www.OSHA.gov
3. Online Regulations
4. Quick Reference

1. Code of Federal Regulations
   • https://www.law.cornell.edu/cfr/text/29/chapter-XVII

2. Website:
   • https://www.osha.gov/

3. Online Regulations:
   • https://www.osha.gov/laws-regs/regulations/standardnumber/1910
   • https://www.osha.gov/laws-regs/regulations/standardnumber/1926

4. Quick and Easy References:
   • https://www.osha.gov/dte/outreach/intro_osha/7_employee_ppe.pdf
   • https://www.osha.gov/SLTC/etools/construction/falls/mainpage.html
   • https://www.osha.gov/SLTC/etools/construction/falls/guardrail.html
   • https://www.osha.gov/SLTC/etools/construction/falls/safetynet.html
   • https://www.osha.gov/SLTC/etools/construction/falls/fallarrest.html
OSHA: Focus on safety, especially fall hazards

OSHA: Region 4 Enforcement Actions Against Construction

WHAT DOES OSHA SAY?

OSHA:
Region 4
Enforcement Actions
Against Construction

APRIL 26, 2018
U.S. Department of Labor and Florida Roofing Contractor Settle Lawsuit on Whistleblower Allegations

MARCH 23, 2018
U.S. Department of Labor Cites Roofing Contractor For Exposing Employees to Fall Hazards, Proposes Penalties

MARCH 16, 2018
U.S. Department of Labor Cites Florida Roofing Company After Employee Suffers Fatal Heat-Related Injury

AUGUST 9, 2017
North Florida Roofing Company Cited Again for Workplace Safety Hazards; OSHA Has Investigated Great White Construction a Dozen Times Since 2012

OSHA: Region 4 Enforcement Actions Against Construction, cont.

• https://www.osha.gov/news/newsreleases/region4/03232018
• https://www.osha.gov/news/newsreleases/region4/08092017
OSHA: Region 4 Enforcement Actions Against Construction, cont.

Quick & Easy References

- [https://www.osha.gov/dte/outreach/intro_osha/7_employee_ppe.pdf](https://www.osha.gov/dte/outreach/intro_osha/7_employee_ppe.pdf)
WHAT DOES OSHA SAY?

General Regulations

• 29 C.F.R. § 1926.20(f): Compliance Duties Owed to Each Employee
  • 29 C.F.R. § 1926.20(f)(1): Personal Protective Equipment
  • 29 C.F.R. § 1926.20(f)(2): Training

• 29 C.F.R. § 1926.21: Safety Training and Education

• 29 C.F.R. § 1926.23: First Aid and Medical Attention

• 29 C.F.R. § 1926.24: Fire Protection and Prevention

• 29 C.F.R. § 1926.25(c): Housekeeping

• 29 C.F.R. § 1926.50(a): Medical Services and First Aid

• 29 C.F.R. § 1926.51(c): Sanitation

• 29 C.F.R. § 1926.51(f)(3): Lavatories

Regulations Concerning Safety and Health in Construction:

General Regulations

• 29 C.F.R. § 1926.20(f): Compliance Duties Owed to Each Employee
  https://www.osha.gov/laws-reggs/regulations/standardnumber/1926/1926.20

• 29 C.F.R. § 1926.21: Safety Training and Education
  https://www.osha.gov/laws-reggs/regulations/standardnumber/1926/1926.21

• 29 C.F.R. § 1926.23: First Aid and Medical Attention
  https://www.osha.gov/laws-reggs/regulations/standardnumber/1926/1926.23

• 29 C.F.R. § 1926.24: Fire Protection and Prevention

• 29 C.F.R. § 1926.25(c): Housekeeping
  https://www.osha.gov/laws-reggs/regulations/standardnumber/1926/1926.25

• 29 C.F.R. § 1926.50(a): Medical Services and First Aid
  https://www.osha.gov/laws-reggs/regulations/standardnumber/1926/1926.50

• 29 C.F.R. § 1926.51(c): Sanitation
  https://www.osha.gov/laws-reggs/regulations/standardnumber/1926/1926.51
WHAT DOES OSHA SAY?

Regulations Concerning Safety and Health in Construction:
Noise Exposure, Personal Protective Equipment, Head, Hearing, Eye and Face Protection

- 29 C.F.R. § 1926.52(a): Occupational Noise Exposure
- 29 C.F.R. § 1926.95: Criteria for Personal Protective Equipment
  (1) Except as provided by paragraphs (d)(2) through (d)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.
- 29 C.F.R. § 1926.100: Head Protection
  (a) Employees working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns, shall be protected by protective helmets.
- 29 C.F.R. § 1926.101: Hearing Protection
- 29 C.F.R. § 1926.102: Eye and Face Protection
  (1) The employer shall ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.
  (2) The employer shall ensure that each affected employee uses eye protection that provides side protection when there is a hazard from flying objects. Detachable side protectors (e.g. clip-on or slide-on side shields) meeting the pertinent requirements of this section are acceptable.

Regulations Concerning Safety and Health in Construction:
Noise Exposure, Personal Protective Equipment, Head, Hearing, Eye and Face Protection

- 29 C.F.R. § 1926.52(a): Occupational Noise Exposure
  [URL](https://www.osha.gov/laws‐regs/regulations/standardnumber/1926/1926.52)
- 29 C.F.R. § 1926.95: Criteria for Personal Protective Equipment
  [URL](https://www.osha.gov/laws‐regs/regulations/standardnumber/1926/1926.95)
- 29 C.F.R. § 1926.100: Head protection
  [URL](https://www.osha.gov/laws‐regs/regulations/standardnumber/1926/1926.100)
- 29 C.F.R. § 1926.101: Hearing Protection
  [URL](https://www.osha.gov/laws‐regs/regulations/standardnumber/1926/1926.101)
- 29 C.F.R. § 1926.102: Eye and Face Protection
  [URL](https://www.osha.gov/laws‐regs/regulations/standardnumber/1926/1926.102)
WHAT DOES OSHA SAY?

Regulations Concerning Safety and Health in Construction:

Safety Belts, Lifelines, Lanyards, Safety Nets, Fire Protection

- 29 C.F.R. § 1926.104: Safety Belts, Lifelines, and Lanyards
- 29 C.F.R. § 1926.105: Safety Nets
  (a) Safety nets shall be provided when workplaces are more than 25 feet above the ground or water surface, or other surfaces where the use of ladders, scaffolds, catch platforms, temporary floors, safety lines, or safety belts is impractical.
- 29 C.F.R. § 1926.150: Fire Protection
  (1) The employer shall be responsible for the development of a fire protection program to be followed throughout all phases of the construction and demolition work, and he shall provide for the firefighting equipment as specified in this subpart.
  (b) Water supply.
  (c) Portable firefighting equipment

Regulations Concerning Safety and Health in Construction:
Safety Belts, Lifelines, Lanyards, Safety Nets, Fire Protection

- 29 C.F.R. § 1926.104: Safety Belts, Lifelines, and Lanyards
  https://www.osha.gov/laws-reggs/regulations/standardnumber/1926/1926.104
- 29 C.F.R. § 1926.105: Safety Nets
  https://www.osha.gov/laws-reggs/regulations/standardnumber/1926/1926.105
- 29 C.F.R. § 1926.150: Fire Protection
  https://www.osha.gov/laws-reggs/regulations/standardnumber/1926/1926.150
WHAT DOES OSHA SAY?

Regulations Concerning Safety and Health in Construction:

Fall Protections

- **29 C.F.R. § 1926.500: Fall Protections**
- **29 C.F.R. § 1926.501: Duty to have Fall Protection**
  - Structural integrity
  - Unprotected sides, edges
  - Low-slope roofs
  - Steep roofs
- **29 C.F.R. § 1926.502: Fall protection systems criteria and practices**
  - Guardrail systems
  - Safety net systems
  - Personal fall arrest systems
  - Positioning device systems
  - Warning line systems
  - Controlled access zones
  - Safety monitoring systems
  - Covers
  - Protection from falling objects
  - Fall protection plans
- **29 C.F.R. § 1926.503: Training Requirements**

Regulations Concerning Safety and Health in Construction:

Fall Protections

- **29 C.F.R. § 1926.500: Fall Protections**
  https://www.osha.gov/laws‐regs/regulations/standardnumber/1926/1926.500
- **29 C.F.R. § 1926.501: Duty to Have Fall Protection**
- **29 C.F.R. § 1926.502: Fall Protection Systems Criteria and Practices**
- **29 C.F.R. § 1926.503: Training Requirements**
  https://www.osha.gov/laws‐regs/regulations/standardnumber/1926/1926.503