

**Oregon Governor's
Occupational Safety & Health Conference**

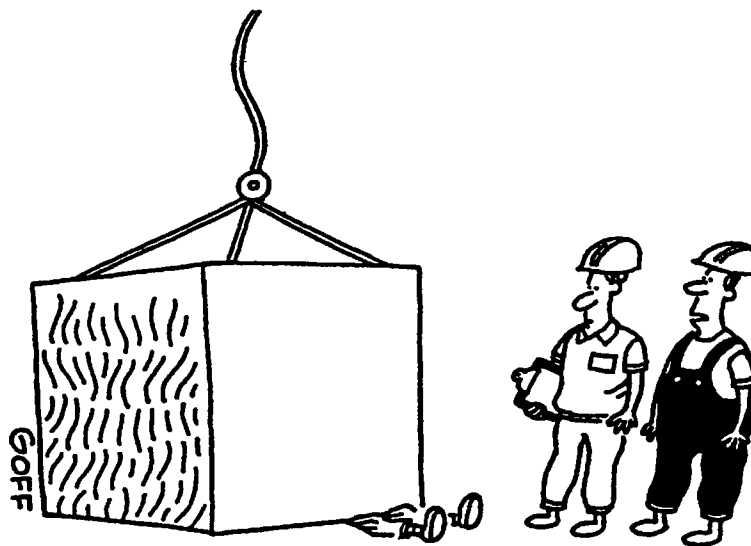
**MANAGING CATASTROPHIC
WORKPLACE ACCIDENTS**

James A. Lastowka, Esq.

March 12, 2009

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©



**"It's Worse Than It Looks.
That's Our Safety Lawyer."**

Construction Work is Challenging

- The physical accomplishments of the construction industry are awesome
- Skyscrapers, bridges, dams, towers, highways, tunnels ... and more
- The physical challenges are immense
- The truly marvelous can begin to seem routine

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Construction Work Is Dynamic

- Conditions are constantly changing
 - » Heavy equipment, including massive cranes are used
 - » Earth is excavated
 - » Formwork and scaffolding is erected
 - » Loads are lifted
 - » Concrete is poured
 - » Steel is erected

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Construction Workers Are Human

- All accomplishments in the construction industry – from the simplest to the most complex – result from application of the full range of human endeavor – brains, brawn, work and sweat
- Employees are human
 - » Workers bring the full range of the human condition to work – physical and emotional
- Humans make mistakes
- Accidents are preventable ... but accidents happen
- The risk of a serious accident is ever-present
- Substantial liability risks are triggered by major accidents

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

One Minute, It's Business As Usual

- It's another day ... and all is well
- The field implementation of the design is working
- The project is on schedule and budget
- The client is happy ... at least relatively
- Your company management is happy ... relatively
- You settle in at your desk and think about how well things have gone and what you need to accomplish that day – what's next on your daily punch list

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

The Next Minute, ... *All Hell Breaks Loose!*

- You hear a loud, strange noise, your radio squawks, your phone rings, an ashen face appears at your door
- “Oh my god, you won’t believe it, something has gone terribly wrong, come right now ...”
- Your skin tingles, your heart pounds
- You sense right away that your day – your career – your life – are about to get much more complicated
- You ask without really wanting to know the answer: “WHAT HAPPENED?”

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Disaster Has Struck ...

- The building, ... the bridge, ... the tower, ... the girders, ... a deck, ... a wall, ... a scaffold, ... a trench, ... a tower crane ... has collapsed
- Rubble is everywhere – The devastation is immense
- 1, ... or 3, ... or 5, ... or 10, ... or more ... workers ... or members of the public have been killed
- Numerous others have been seriously injured, some are trapped, some are in shock
- People are screaming – Workers are running
- Sirens are blaring – Fire, rescue, police
- Company personnel ... emergency responders ... good samaritans ... are trying to assist
- Bystanders and the news media are gathering
- Chaos reigns

James A. Lastowka, Esq.

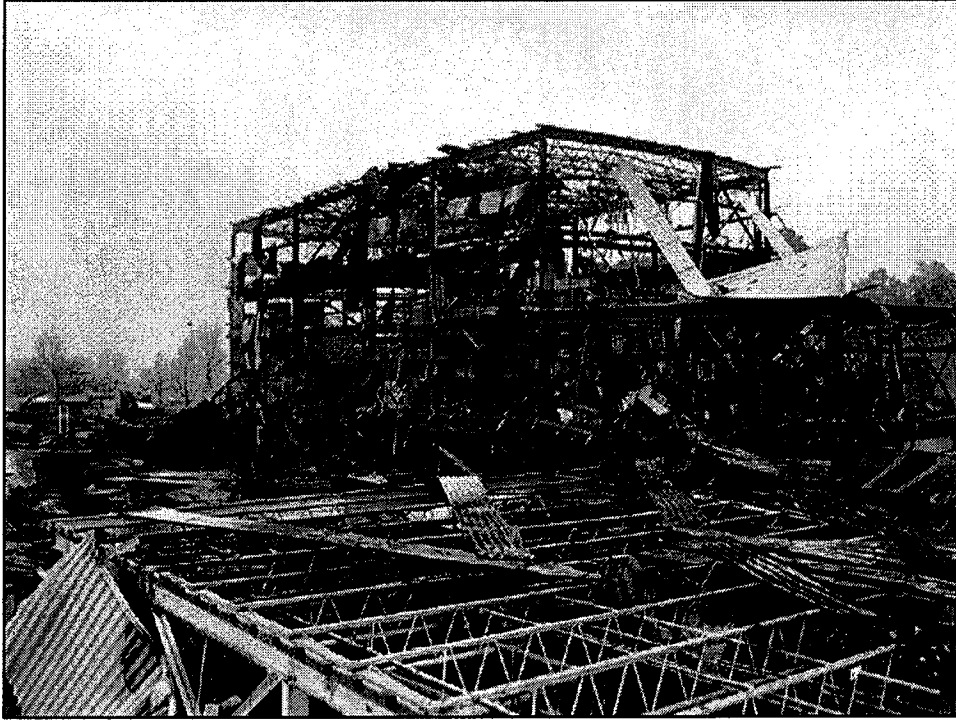
McDermott Will & Emery LLP ©



Chaos Reigns ...

"A large crowd of onlookers added to the nearly 100 police, firefighters, sanitation, emergency medical technicians, Red Cross workers, and other emergency response persons and emergency vehicles already surrounding the chaotic scene."



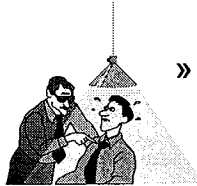


Thoughts Flash Through Your Mind

- What happened? How did it happen? Why did it happen?
- Who got hurt? How badly? Where is Rich? Is Kathy OK?
- Who screwed up?
- Did we? Did I?
- How much trouble are we in? How much trouble am I in?
- What do we do now? What do I do now?

The Questions and Demands Begin

- Information and answers are needed:
 - » Rescue workers, police, fire, building inspectors
 - » OSHA
 - » Your company
 - » Owners
 - » The CM & GC
 - » Subcontractors
 - » News media
 - » Families
 - » Unions
 - » Insurers
 - » Attorneys: For injured workers, companies, insurers
 - » Politicians

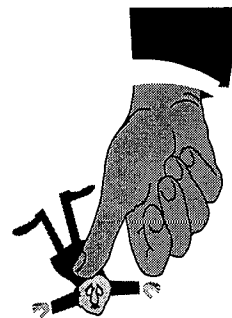


James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

The Questions & Demands Continue

- Your project is quite literally under siege
 - » Everyone wants access to the site
 - » Everyone wants to know what happened
 - » Everyone wants to know why it happened
 - » Everyone wants the "evidence"
 - » Everyone wants to interview: eye witnesses, workers, safety personnel, managers, designers, engineers, architects
 - » Everyone wants documents, drawings, inspection records
- Everyone wants everything ... and they want it NOW

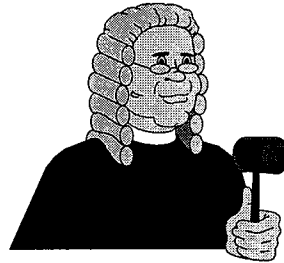


James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

But The Risks Are Large ...

- Criminal prosecution? Of the Company? Individuals?
- OSHA citations and penalties
- Other regulatory agencies
- Lawsuits on behalf of killed or injured workers
- Contractual claims & liabilities
- Insurance claims
- Reputational risks: Clients, Workforce, Family, Career, Community



James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Headlines

- *"Two Accept Plea Deals in Worker's Death in Trench Collapse"*
- *"Employer Pleads Guilty In Trench Collapse, Will Serve Jail Time"*
- *"Roofing Company Pleads Guilty in Case Involving Scaffold, Power Lines, Electrocuting"*
- *"Company Pleads Guilty To Willful Violation count In Fall Death"*
- *"Construction Supervisor Sentenced to Jail for Trucker's Electrocuting"*
- *"Demolition Contractor Receives Jail Term for Role in Fatality"*
- *"Employer Admits to Manslaughter In Scaffold Collapse Case"*

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

THE TIGHTROPE

- Workplaces are dynamic – Employees are human
- Catastrophic accidents can occur
- Crimes, fines & lawsuits – potential large liabilities – can follow
- Competing rights and interests – employer, employee, enforcement agencies, 3rd parties



James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

You Need to Focus ... ASAP

- The response to a workplace catastrophe may determine whether the substantial risks presented are managed and potential liabilities minimized
 - » Or whether the risks are exacerbated and liabilities maximized
- Risks are minimized by understanding the situation, managing the chaos, and responding in an informed and organized manner ... as soon as possible
- Risks are maximized by failing to recognize them and by failing to implement methods of controlling them

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

You Need to Focus ... ASAP

- It is extremely difficult to consider risks and control them on the fly in the midst of a disaster
- Pre-thinking and pre-planning are crucial
 - » What can happen?
 - » What are our risks? How will these risks be managed?
 - » What will our response be?
 - » What are our duties & obligations?

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Elements of a Catastrophe Response Plan

- Anticipate the types of disasters that can occur
- Plan the makeup of the core high level decision-making team – including the role of counsel
 - » Privileged & confidential investigation?
- Plan the onsite response strategy
- Plan the makeup of the onsite response team
- Determine the internal investigation team strategy
- Identify key contacts for police/regulatory investigations
- Anticipate & implement a forensics/evidence strategy
- Plan for needs of affected employees
- Plan the media/public relations approach

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Elements of a Catastrophe Response Plan

- Plan the approach for post-disaster site safety and site access controls
- Plan procedures for handling third party requests for information – including from your and other insurers
- Plan for how employee interview requests will be handled
- Plan for how document requests will be handled
- Determine what end product of the Company's investigation will be
 - » A report? Privileged or non-privileged?
 - » For what purpose? To be provided to whom?

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

The High Level Catastrophe Response Team

- Who needs to be involved and to what extent? Who needs to be advised? Who needs to be provide input? Who is the decision maker?
- Depending on scale of the disaster:
 - » **CEO involvement** – Direct role or "report to" capacity?
 - » **Attorney involvement** – General Counsel, staff attorney, outside counsel?
 - » **CFO input** – Advise markets, investors, employees, and customers, of possible financial effects, if any
 - » **Risk Management/Insurance** – Make necessary notifications of potential claims and manage all insurance aspects
 - » **Human Resources, Employee Benefits, Labor Relations** – Anticipate and deal with impacts on employees – including counseling
 - » **Project Management** – Site assessment and control, project recovery plan
 - » **EH&S** – address site safety issues and avoid further incidents
 - » **Public Relations** – Manage media and tell the company's side of the story
 - » **Spokesperson** – Who will be the spokesperson for the company and investigation team concerning: the incident, the company's involvement if any, and the investigation process

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

The Role of Counsel

- Role of counsel
 - » Provide legal advice to the company as to all potential liabilities
 - » Conduct privileged & confidential investigation
 - » Anticipate & address evidence issues (avoid spoliation and retain evidence)
 - » Anticipate and address legal demands (access, interviews, documents) from investigating authorities and third parties
 - » Prepare and review investigation protocols, waivers, releases and confidentiality agreements
 - » Anticipate legal claims, prepare claims and defenses
 - » Retain experts?

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

The Internal Investigation Team

- Privileged & confidential – Attorney participation
- Who is the investigation team leader? Why? Will the leader be a good witness ?
- Who should be on the team? Are they good witnesses?
 - » Size is important – and here, smaller may be better – avoid too large and therefore unwieldy teams
 - » Corporate representative(s) – long term availability?
 - » Project representative(s) – be alert to possible conflicts
 - » Technical disciplines needed?
 - » EHS role?
- Outside experts? Forensic experts?

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Employee Support Considerations

- Too often unanticipated in planning and therefore inadequately considered and addressed during a crisis
- Workplace disasters can exact a heavy human toll
 - » Not only on victims and their families
 - » But also on co-workers, supervisors, and managers
 - Those who were involved in the work, eye witnesses to the accident, friends of the killed or injured
- Crisis and grief counseling needs must be promptly addressed
- The Company's Human Resources, Employee Benefits and insurance functions must be directly involved and must respond timely
 - » Medical services, family support and accommodations, visits, funeral arrangements, collections, and donations
 - » Workers compensation, insurance, work schedules, layoffs, terminations

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Public/Media Relations

- A pre-planned public relations approach must be in place for handling workplace disasters
- A workplace catastrophe is a news event
- The media will be at the project entrance with microphones and cameras
- News helicopters may be hovering overhead
- The event may make national headlines for a day or two, but will to be the focus of local or trade media for a much longer
- How much publicity is generated depends on the nature of the event – and where it occurred

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Public/Media Relations

- Who is in charge of media strategy?
- Will a public relations firm be involved?
- Who is authorized to speak to the press on behalf of the company? A project manager? A Company headquarters representative?
- What basic approach will be taken? “No comment”; “The accident is under investigation”; We will share our findings when we know more”; Our immediate concerns are for our employees and their families”
- If public relations is not part of your solution, it may be part of your problem

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Agency Contacts and Coordination

- Do not underestimate the requests, demands, time & resource pressures, and risks that can be imposed on you by the various government authorities conducting investigations
- Various law enforcement and regulatory agencies are likely to be required to investigate the disaster or specific aspects of it
- Do not assume that they are all on the same page
- They all have jobs to do – and in each of their minds their own authority and agendas are of paramount importance
- Simultaneous and sometimes conflicting “priority” requests are often made
- Dealing with agency demands can be very time consuming – and stressful
- To effectively deal with agency requests, you must understand their authority – as well as the limits on their authority

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Agency Contacts and Coordination

- You need the right contact person – a skilled point person – to consistently deal with requests by authorities
 - » The authorities conduct disaster investigations for a living. If you have been fortunate, you have not had the opportunity to gain similar experience – up until now
- Regardless of whether you want to be “fully cooperative” or “aggressively assertive,” the issues are important and the process is a real time chess match
- In order to minimize potential liabilities, your agency contact person needs to understand the rules
 - » If not, you can find yourself being pushed into a corner that you otherwise could have avoided

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Agency Contacts and Coordination

- The agency contact person will need to be prepared to receive – and respond – to multiple agency requests for:
 - » Access to the site
 - » Access to the evidence
 - » Assertions of authority to seize evidence
 - » Requests for interviews of employees
 - » Requests for documents
 - » Requests for explanations of technical issues
- The agency contact person will need to know how to:
 - » Balance conflicting demands for priority responses
 - » Yield and promptly respond where appropriate
 - » Push back and be assertive where appropriate
 - » Keep the authorities relatively happy while being appropriately protective of the rights of the company and its employees

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Third Party Requests

- Agency demands aren't the only demands that will need to be addressed
- Other third parties will also want information from you
 - » Families, owners, CMs, GCs, subcontractors, insurers, attorneys for all of the above
- They will want:
 - » Access to the site and physical evidence
 - » Documents: contracts, drawings, correspondence, inspections, progress photographs, audits, witness statements, investigation reports
 - » Interviews of design personnel, project management, safety representatives, workers, witnesses

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Site Access, Site Safety & Evidence Preservation

- The site conditions that everyone wants access to pose serious dangers
- A deliberate, careful approach must be taken – or a bad situation will be compounded by further injuries
- A controlled site safety plan must be implemented and followed
- Site access must be controlled – not only for safety reasons but to preserve evidence and avoid spoliation claims
- A “gatekeeper” is needed – and quite often an actual “gate”

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Site Safety, Access & Evidence Preservation

- A plan for identifying and preserving evidence must be implemented
- Whose property is it? Who has an interest in the evidence?
- Input as to what items are of interest needs to be obtained from all interested parties
- An opportunity for interested parties to observe and document evidence “in place” should be accommodated if at all possible (taking into account safety and logistical issues)

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Site Safety, Access & Evidence Preservation

- A secured evidence storage area may be necessary with procedures governing access to the area and to the evidence
- A process for notifying interested parties of planned examination and testing of evidence items should be implemented
- An opportunity for input into testing protocols and for observation of testing needs to be provided
- An agreement to share factual data resulting from testing may be needed

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Interview Process

- Interviews are a one part, but a key part of the investigation process
- Make no mistake: Risks and liabilities are minimized or maximized based on what is said by witnesses, employees, or other persons
- Too often the interview process is conducted without due regard to its importance
- Most individuals do not adequately understand their rights – or the risks
- Most companies do not adequately understand their rights – or the risks
- Most individuals and companies do not understand what they can or cannot do – or what they should or should not do – during post-accident interviews

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Investigator's Handbook

*“The spoken word is
potentially the greatest
of all sources of
investigative evidence”*

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Headline

*“Statements Made to State
Safety Inspector Can Be
Used in Employer’s
Criminal Trial”*

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

False Statements

- *“Court Upholds Conviction of Pipe Maker On Charges of Lying to OSHA Investigators,”* 8/16/07, BNA OSHR
- *“Texas Man Gets Prison Term for Lying About Worker Training for Anthrax Job,”* 11/20/03, BNA OSHR
- *“Man Sentenced to 5 Months in Prison for Obstructing OSHA Cave-In Investigation,”* 12/22/02, BNA OSHR
- *“Four Men Face Felony Charges for Making False Statements,”* 1/9/06, MSHN

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

False Statements

"Feds File Criminal Charges in Death of Roofer,"
4/2/08, Quad-Cities Online:

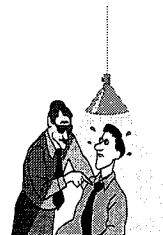
- Worker fell 16' through a skylight & died. Criminal felony complaint against superintendent alleges:
 - » Altering scene by placing fall protection equipment on the roof after the accident
 - » Falsely telling the OSHA inspector that the equipment had been there
 - » Instructing a witness to not tell OSHA about the lack of fall protection equipment
 - » Knowingly making false statements to OSHA inspector

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Interview Process

- Post-disaster investigations and interviews should be viewed not just as part of a fact-finding process – but also as part of a likely litigation process
- Employees should understand the importance of what they are "testifying" to and therefore the need to:
 - » Recognize that (usually) they are fact witnesses
 - » Recognize the agenda of a questioner
 - » Speak to facts they have knowledge of
 - » Avoid speculation that may or may not be true
 - » Avoid opinions that may or may not be well-founded



James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Interview Process

- Unless an agency has issued a subpoena, or a third party has authorization for a deposition, an individual has the right to decline a request to be interviewed
- Unless an agency has issue a subpoena, or a third party has authorization for a deposition, an individual has flexibility as to the date, time and location for an interview
- Unless an agency has issue a subpoena, or a third party has authorization for a deposition, an individual is not required to agree to be tape recorded or to sign a statement
- In almost all circumstances an individual can have a representative present during an interview
- In sum, interviews are extremely important and they should be handled with due care

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Interview Process

- Individuals need to recognize that they have rights concerning requests to interview them
- Most people are willing to cooperate and explain what they know about an incident – to find out what happened and prevent recurrences
- But they may not feel so kindly if the questioner is clearly adversarial
- During an investigation, almost all interview requests are for "voluntary" interviews
 - » Certainly, for third party requests, until litigation starts and subpoenas for deposition or trial are issued
 - » Even for agencies, initial interview requests are usually for "voluntary" interviews
 - However, if agencies want to interview a particular person bad enough they can issue investigative subpoenas

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Document Request, Review & Production Process

- A workplace disaster triggers a burdensome “paper chase”
- Documents contain facts and tell stories – those facts and stories will be pursued by all interested parties
- Drawings, specification, correspondence, tests, certifications, inspections, photographs, audits, meeting minutes, safety complaints – all will be sought
- Agencies can back up their requests for “voluntary” production with subpoenas
- Third parties may or may not have contractual rights to information or may invoke a “duty to cooperate” (insurers)
- Voluntary mutual “exchanges” of documents and other information may be agreed to

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Document Request, Review & Production Process

- The number of documents involved can number in the thousands, tens of thousands, or hundreds of thousands
- The number of requesting parties can be a few or dozens
- Again, to bring order to potential chaos, a document request, review and production process is needed
- Identify a central contact person to whom all document requests must be directed and who will provide all documents
- Establishment of a process for determining:
 - » Whether the document request needs to be responded to
 - » Exactly what documents the request is seeking – often there will be ambiguity

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Document Request, Review & Production Process

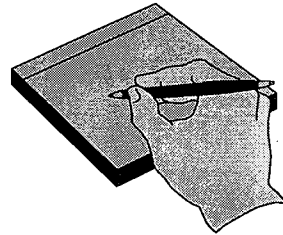
- » Whether information is privileged, trade secret, confidential business information, or otherwise confidential
- » What documents will be provided in response to the request
- » What confidentiality requirements must be agreed to by the recipient
- » What information will be provided in exchange for your information
- A system must be implemented to track all document requests received from all parties and the exact documents provided in response
- Logistical issues – do not underestimate the burden that can be placed on your limited resources in responding to document requests from agencies and others

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Investigation End Product

- What will be the end product of the Company's investigation?
 - » The High Level Team needs to decide this at the outset of the investigation
 - Is the investigation being conducted under privilege?
- Are there any requirements for an actual report?
 - » To an agency?
 - » To an owner or client?
 - » Internal?
- If not "required," is there any overriding need for a written report?
 - » Internal?
 - » The customer?
 - » Employees?
 - » The public?



James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Investigation Report?

- If a report is to be prepared – for internal or external purposes – what will be the uses – and possible abuses (third parties) – of the report
- What will be the form and content of the report
 - » A detailed narrative?
 - » Summary findings, conclusions and recommendations?
 - » Who will draft the report?
 - » Who will sign off on the report?
 - » What will the consequences of the report be?
- If a “public” release is planned:
 - » Who, when, where, and how?

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

The Keys to Catastrophe Response & Management

- ✓ Recognize that a disaster can happen on your project
- ✓ Anticipate the event and pre-plan
- ✓ Know the risks and manage them
- ✓ Place responsibilities for executing the plan in capable hands



James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Bonus: Effective “Risk” Management

- Identify your actual site-specific key risks
- Focus on them
- Train on them – and then train on them again (... and again)
- Document – and document again – your focus and training
- Constantly police these risks
- Effectively enforce your rules ... and clearly document your enforcement

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

What Are Your Key Risks?

- Five key, recurring, “hot button” construction safety risks :
 - » Crane safety
 - » Shoring/false work
 - » Trench safety
 - » Fall protection
 - » Mobile equipment safety

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

CRANE SAFETY

- Construction boom = crane “skylines”
- Crane safety has long been an important issue, but recent high profile incidents have now made crane safety a major hot button issue
- Issues include: erection, operation, inspection, maintenance, training, licensing & certification
- State legislation & local ordinances regarding cranes are being demanded and enacted

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Crane Safety

- At your projects, what is your crane “exposure” – and how is this risk being controlled?
 - » How do you know that the operator is qualified and competent?
 - » How is proper installation verified?
 - » How are crane operations monitored?
 - » How are the exposures of others within the risk zone actually controlled?
 - » How do you document your safety efforts regarding cranes?

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Headlines - Cranes

- *"Seven Dead, 24 Injured in Collapse; City Inspector Faked Crane Site Paperwork,"* 3/20/08, Eyewitness News
- *"Cranes: OSHA Investigates Miami Crane Collapse That Killed 2, Injured at Least 4,"* BNA OSHR 3/31/08
- *"Southland DA Charges Crane Operator in Deadly '06 Incident,"* Cal-OSHA Reporter, 4/18/08
- *"Crane Operator Killed, 2 Injured in Power Pole Encounter,"* Cal-OSHA Reporter, 4/18/08
- *"Dallas Officials look Into Crane Safety,"* Dallas Morning News, 4/2/08
- *"State [PA] Lacks Crane Safety Regulations,"* Evening Bulletin, 4/3/08

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Shoring/False Work

- A very common risk exposure, but one in which even "small" mistakes can have catastrophic consequences – major accidents, major investigations, major liabilities
- Mere trust that the job is being done correctly may not be enough
- How much involvement in selection and coordination of contractors, work plans, review of plans, execution of work, and ongoing inspections is needed?

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Trench Safety

- Fatal trench collapses continue to occur
- One of the worksite accidents that is most frequently criminally prosecuted
- Trenching accidents will get close OSHA – and prosecutor – scrutiny to determine why proper precautions were not taken
 - » *“A Trench Caves In; A Young Worker is Dead. Is It a Crime?”*
 - » *“Employer Pleads Guilty In Trench Collapse, Will Serve Jail Time”*
- If your project involves excavations: plan, train, provide equipment, inspect & enforce – and document all of the above

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Fall Protection

- Fall protection for employees working at heights likely is your most common risk exposure
- This fact is recognized and this specific issue gets a tremendous amount of attention – but fatal falls continue to occur too frequently
- What to do?
 - » Train, train & train – but don't just *rely* on the training
 - » Plan for and “engineer-out” fall risks where possible
 - » *Diligently* police fall exposures, including the integrity of barriers & the proper use of equipment, and *promptly* abate!
 - » Discipline, discharge & document

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

Mobile Equipment Safety

- Your projects require the use of various types of large mobile equipment
- Serious accidents and fatalities involving mobile equipment occur far too frequently
- Causes: operator error, lack of training, equipment defects, poor maintenance, lack of basic safety precautions, inattention not only by those on the equipment, but around it
- At your projects, how is operator training, knowledge, experience and skills verified?
- How are the exposures of others to the hazards presented, not just per plans but in actual day-to-day practice?
- How is the proper use of heavy equipment monitored?
- How do you document your safety efforts regarding mobile equipment?

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

THE KEYS TO SUCCESS

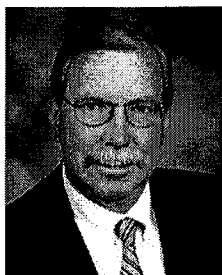
- ✓ Identify the site's actual key risks
- ✓ Vigorously train and inspect to those key risks
- ✓ *Promptly* abate all noted hazards
- ✓ Effectively discipline for violations of safety requirements
- ✓ Clearly document training, inspections & discipline
- ✓ Do all of the above – again



James A. Lastowka, Esq.

McDermott Will & Emery LLP ©

James A. Lastowka



James A. Lastowka
Partner
Washington, D.C.
T: 202.756.8245
F: 202.756.8087
jlastowka@mwe.com

James A. Lastowka is a partner in the law firm of McDermott Will & Emery LLP based in Washington, D.C. office. He is member of the Firm's OSHA, MSHA & Catastrophe Response Practice Group. Jim has practiced exclusively in the field of occupational safety and health for over 30 years. He is a former Commissioner and General Counsel of the Federal Mine Safety & Health Review Commission, and a former Assistant General Counsel of the U.S. Occupational Safety & Health Review Commission. He is a recognized authority on OSHA & MSHA law and has a nationwide safety and health practice.

Jim's practice includes responding onsite to catastrophic industrial and construction workplace accidents, including explosions, chemical releases and collapses of buildings, tunnels, scaffolds, and other structures, conducting internal investigations of fatal and other workplace accidents, managing investigations by OSHA, MSHA, the U.S. Chemical Safety & Hazard Investigation Board (CSB), EPA, and ATF, as well as by state and local regulatory and law enforcement agencies, and structuring industrial hygiene surveys or other exposure assessments regarding potential employee exposures to toxic chemicals or mold. In addition, Jim's practice includes providing compliance counseling, conducting safety and health audits and due diligence reviews, handling the full range of OSHA and MSHA litigation, including appeals of citations, penalties and withdrawal orders, investigating and defending discrimination and whistleblower complaints, and participating in rule making proceedings.

Jim is a member of the American Bar Association, including its Labor and Employment Law Section, Occupational Safety and Health Law committee, and its Forum on the Construction Industry. He is a frequent speaker and writer on managing responses to workplace catastrophes, conducting accident investigations, and OSHA and MSHA issues. He is on the editorial board and a contributing editor for *Occupational Hazards Magazine*.

Jim is admitted to the bars of the District of Columbia and Pennsylvania.

James A. Lastowka, Esq.

McDermott Will & Emery LLP ©