

# CONSTRUCTION LAWLETTER

For Industry Professionals, Managers, Trades & Suppliers

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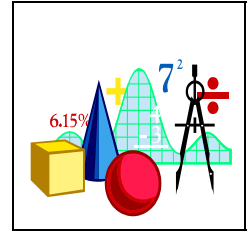
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## LIABILITY FOR JOBSITE SAFETY, ADMINISTRATION

The liability of contractors and A-E (Architect-Engineer) design professionals, was considered by an Ohio Court of Appeals in an important decision, providing guidance for jobsite management and administration.

"[Page 804] \*\*\* Ohio case law addresses a similar situation when it develops the **duties** general contractors owe to the employees of independent subcontractors. Ordinarily, general contractors owe no duty to the workers employed by independent subcontractors. A contractor's duty may arise, however, if it either actively participates in the subcontractor's work or explicitly assumes responsibility for worker safety. As the Supreme Court held in Cafferkey v. Turner Constr. Co. (1986), [21 Ohio St.3d 110](#), 113, 21 OBR 416, 419, 488 N.E.2d 189, 192, "[a] general contractor who has not actively participated in the subcontractor's work, does not, merely by virtue of its supervisory capacity, owe a duty of care to employees of the subcontractor who are injured while engaged in inherently dangerous work." Because erection of a building constitutes inherently dangerous work, general contractors typically owe no duty to employees of independent subcontractors. Michaels v. Ford Motor Co. (1995), [72 Ohio St.3d 475](#), 478, 650 N.E.2d 1352, 1355, fn. 4.

However, a general contractor owes such workers a duty when it actually participates in the job operation" performed by the subcontractor. Cafferkey, supra, 21 Ohio St.3d at 112, 21 OBR at 417, 488 N.E.2d at 191; Hirschbach v. Cincinnati Gas & Elec. Co. (1983), [6 Ohio St.3d 206](#), 208, 6 OBR 259, 260, 452 N.E.2d 326, 328. Such active participation results when the general contractor "direct[s] the activity which resulted in the injury and/or [gives] or denie[s] permission for the critical acts that [lead] to the employee's injury." Bond v. Howard Corp. (1995), [72 Ohio St.3d 332](#), 650 N.E.2d 416, syllabus; Pifher v. Ford Motor Co. (Aug. 10, 1994), Lorain App. No. 93CA005581,

unreported, 1994 WL 431544. Without other activity, however, a general contractor's exercise of his supervisory role does not constitute "active participation" so as to create a duty. Bond, supra, 72 Ohio St.3d at 335, 650 N.E.2d at 419. Thus, a duty does not arise just because the general contractor retains power to monitor and coordinate activities, for the "very nature of the **construction** business requires a general contractor \* \* \* to 'supervise' a **construction** job." Michaels, [Page 805] supra, 72 Ohio St.3d at 479, 650 N.E.2d at 1356, citing B@ supra, at 339, 650 N.E.2d at 422.

While a general contractor May also explicitly assume responsibility for workers' safety, many contract provisions between general contractors and subcontractors do not give rise to such assumed responsibility. Cafferkey, 21 Ohio St.3d at 113, 21 OBR at 419, 488 N.E.2d at 192. Contract provisions that do not create such a duty include provisions (1) assigning control over safety procedures to the general contractor, id.; (2) retaining a general contractor's right to review details and **construction**; (3) requiring that the work be finished under an **architect's** and general engineer's direction and to their satisfaction, Gilday v. S & R Playhome Realty Co. (June 14, 1990), Cuyahoga App. No. 57022, unreported, 1990 WL 82301; (4) promising that a general contractor will have a representative at the job site; (5) requiring that a general contractor specify the work to be done by the subcontractor and specifying the items the general contractor will inspect; (6) requiring a subcontractor to replace personnel found to be incompetent; and (7) promising that material supplied by the subcontractor will meet specifications. Mount v. Columbus & S. Ohio Elec. Co. (1987), [39 Ohio App.3d 1](#), 528 N.E.2d 1262, paragraph four of the syllabus. Indeed, in the context of a general contractor's role in safety matters, the Supreme Court considered contractual language similar to that found in this case, and labelled such language "nothing more than standard 'boilerplate' terminology common to virtually all

**construction** contracts. Cafferkey, supra, 21 Ohio  
St.3d at 113, 21 OBR at 418, 488 N.E.2d at 192.

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**( Editor's Note: To be continued in next issue.)**